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NOTE FROM THE EDITORS

The Centre for Documentation of Refugees and Migrants (CDR) is a research organisation and the secretariat of “Human Mobility Studies (HMS)”, a series of lectures in the University of Tokyo. Both of these initiatives are sponsored by the Hogakukan Co.Ltd. under a donation initiative. The initiative was started in April 2010 and will continue till March 2015.

The CDR is charged with several tasks relating to the documentation and dissemination of information on forced displacement, and migration issues; these issues are to be considered from a broad range of disciplinary perspectives. Tasks include inviting experts including academic researchers and practitioners, governmental officers, and lawyers to discuss the pressing issues in our field of research. In addition, by the publishing of original research and information and by providing lectures and training sessions for students, the general public, and professionals, CDR is contributing to the building of a more conscious public opinion vis-à-vis having an open or closed society. Moreover, the CDR is developing an online database for knowledge accumulation and dissemination.

The publishing of this journal, the “CDRQ”, is one of these tasks, and the focus of this journal is to record the activities of the CDR. The CDRQ includes records on seminars, workshops and symposia conducted by the CDR and HMS. While some of the articles published here are written by the reporters and panelists of these events, outside contributions are also welcome.

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ARTICLE

MIGRATION AND THE MAKING OF TRANSNATIONAL SOCIAL SPACES

Harald KLEINSCHMIDT*

ABSTRACT

Migrants moving from one state to another blur borders. In doing so they become creators of transnational social spaces that do not overlap with state territories. Not surprisingly, state governments have responded negatively to the doings of migrants in attempts to formulate and implement migration restriction policies. However, migration restriction measures have often been no more than temporary deterrents, and the history of migration restriction has been the history of its eventual failure.

The paper seeks to establish the alternative perception of migrants as basically autonomous makers of a peculiar type of transnational social space whose most obvious representation is the region. If migration can be used as a definitional feature of the region it loses much of its awe-inspiring capacity and may even become manageable.

I. GENERAL REMARKS

The merits of the concept of transnational social spaces for the analysis of international relations rest in the lack of connection with territory and the resulting wide range of applicability. Transnational social spaces are spatial entities that personal actors have constructed or are in the process of constructing through the plethora of their daily activities and that are often at odds with the territories of sovereign states.¹ The boundaries

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1 For recent discussions of the notion of transnational spaces see Behr 2003; Brock and Albert 1995; Faist ed. 2000; Faist and Özveren eds. 2004; Guarnizo 1998; Maegawa 2006; Hein 2006; Pries 1996; Pries 1998; Pries ed. 1999; Pries ed. 2001.

of transnational social spaces are fuzzy, transient and have been erected, so to speak, from below. Transnational social spaces do not have to be shared by the entirety of the members of population groups residing within or moving through the territories of sovereign states. Neither do they necessarily form spatial bases for collective identities nor are they in need of an established hierarchy of legitimate institutions of public governance. They can generate or support various inclusionistic attitudes towards as well as among migrants and, in soliciting a variety of approaches to migration, differ conceptually from diasporas. Whilst diasporas impose alterity and generate consciousnesses of separateness, transnational social spaces emerge from communal experiences among migrants and settlers and allow the preservation of multiple loyalties. Transnational social spaces vary vastly in size and structure, from microregions straddling the international borders of sovereign states to the globe at large. In merging territories, flexibilising populations and limiting the powers and competences of institutions of governance, transnational social spaces are in opposition against all definitional elements of the sovereign state according to the conventions of European political theory. They can result from a wide variety of factors, cross-cultural exchange, trade, intergovernmental relations at local levels, patterns of warfare and, last but not least, migration.

Foremost among the many difficulties that transnational social spaces offer to whoever studies migration as a social scientist, no matter whether from an anthropological, economic, political science or sociological point of view, is the challenge that these entities pose to some of the more fundamental assumptions on which social science work rests. Transnational social spaces do not support institutions that can generate data, thereby obfuscating if not straightforwardly obstructing social science analysis. They remain elusive phenomena, in a way like the footprints that migrants may leave behind. We know from the footprints that they exist but we do not necessarily know who the people were that left them behind.

In view of these difficulties, I intend to select a specific set of activities that can result in transnational social spaces and a particular spatial unit that can represent them. The select set of activities shall be the doings of international migrants and the spatial unit shall be the region. I shall not focus on political issues of collective identity, although they are important for policy-making, and I shall exclude political decision-makers because they are usually not concerned with details of migration. Instead, I shall investigate the interdependence of migration and regional integration and shall argue that migration is the core definitional element of regional integration, provided that regions are understood, not primarily as institutions of governance, but essentially as grassroots transnational social spaces.² I shall proceed with this argument first by discussing the predicament of approaching international migration from the point of view of governments of sovereign states, second by reviewing some recent innovative social science approaches

2 For a discussion of definitions of regionalism, regional integration and regional co-operation see Boas 2001; Hettne, Inotai and Sunkel eds. 1998; Kleinschmidt 1995; Niemann 2000; Värynen 2003.

to migration, third by presenting some regional migration data, and finally by commenting critically on the migration policy of an existing regional institution.

II. MIGRATION AND THE NATION-STATE: AN IMPOSSIBLE CORRELATION

Moderate constructivist that he is, political scientist Alexander Wendt admits the following five 'properties of the state': '(1) an institutional-legal order, (2) an organisation claiming a monopoly on the legitimate use of organised violence, (3) an organisation with sovereignty, (4) a society, and (5) territory'. The first 'property' he categorises as 'the Marxist's state-as-structure', the second and third as 'the Weberian's state-as-actor', the fourth as 'the Pluralist's state-as-society' and the fifth as 'common to all three'.³ Wendt claims heterogeneous origins for his definition, although all its properties centre on government and are drawn on the biologism informing nineteenth-century political theory.⁴ The definition was then most persuasively argued in the *General Theory of the State* (*Allgemeine Staatslehre*) published by the Austrian publicist Georg Jellinek in 1900. Famously, Jellinek defined the state as the triad of unities of population (Wendt's 'property' no 4), territory (Wendt's 'property' no 5) and government (Wendt's 'properties' no 1,2,3).⁵ In demanding that states can only exist when and as long as all three unities are existing, Jellinek provided for the juristically most refined expression of the nation-state paradigm, which, among others, Max Weber borrowed.⁶ Insisting that states should have one society and one territory and one 'organisation' of government only, Wendt follows the nation-state paradigm but fails to recognise that this paradigm militates against any theory that can possibly bear the label of 'pluralism'. It does not come as a surprise that, as a consequence of his focus on government, migration does not feature in Wendt's book, which portrays societies as demarcated by the international borders of sovereign states and posits populations as groups of residents.

The residentialism at the bottom of Wendt's definition of the state is characteristic for the social sciences at large, not merely those in line with their positivist legacy but also those embracing moderate forms of revisionism. The core feature underlying much of the methodology of the social sciences thus conceived, including economics, is the belief in

3 Wendt 1999, 202.

4 On the biologism of nineteenth-century theories of the state and society see Böckenförde and Dohrn-van Rossum 1978; Coing 1973; Weinstein 1960.

5 Jellinek 1960. By including Jellinek's triad of unities in its definition of the state, the Montevideo Convention of the Rights and Duties of States (1932) has granted validity to the doctrine in terms of international law.

6 Max Weber's notion of the *Anstaltsstaat* recasts Jellinek's juristic diction into the terminology of the social sciences. See Weber 1980, 29.

the fundamental significance of international borders of sovereign states. *Prima facie*, this belief is based on good reason. For about two centuries, institutions of the sovereign state have been the primary generators of social science data, most notably population data. State-controlled population statistics have provided what has been ranked as basic data seemingly required as reference for much social science analysis. However, ever since the early nineteenth century demographers have been painfully aware of the pitfalls of population statistics, which make it difficult for any government of a sovereign state to know exactly how many people reside at what places on the territory under its control.⁷

The reason, put briefly, is migration. Despite persistent government efforts to enforce registration legislation and control movements across international borders, no government has been able to present fully exact demographic data, censuses included.⁸ If migration jeopardises government control over the state population, it is not merely a nuisance for statisticians but a manifest danger for lawmakers, the effectiveness of whose work may be reduced. From the early nineteenth century to the end of the twentieth century, attitudes to migration have therefore been predominantly negative, not only among social scientists but also among lawmakers and administrators. Whenever and wherever it has existed, migration policy has mainly been focused on keeping potential out-migrants at home and purportedly 'unwanted' in-migrants at bay. Despite their known imperfection, population statistics have nevertheless served political purposes. One has been the demonstration of political power.⁹ During the high phase of competition about control over the largest part of the surface of the earth among European imperialist governments at the turn of the twentieth century, the British government enjoyed the unrivalled advantage of being able to direct most of its out-migrants to British colonies.¹⁰ It could thus boast of having the largest population in the most extensive empire under its control, with the implication that it could mobilise the largest and most formidable military force. By contrast, mass out-migration resulted in a net loss of population for Britain's main rival, the German Empire, because most of the out-migrating

7 Thus already explained by Welton 1911, 12-5; Danson and Welton 1857, 1858, 1859, 1960. On the history of population statistics see Arbos 1932; Beteille 1970; Goron 1933; Mauco 1984; Baines 1972, 1978; Carrier and Jeffery 1953; Chapman 2002; Drake 1922; ILO 1922; Ferenczi 1979; Jackson 1991; Krause 1965; Pearce and Mills 1982; Mills and Pearce 1989; Redfern 1990; Shannon 1935; Swaine Thomas 1938, 5-7. For similar observations regarding recent migration data see Zlotnik 1987.

8 For a case study of political problems emerging from census data see Landa 1911; Gainer 1972.

9 Thus explicitly Böckh 1870, 7, 10-1.

10 See Thomas 1954; Thomas 1972; Thomas ed. 1986, for British out-migration to the USA.

Germans were seemingly disloyal 'subjects' seeking new homes overseas and drifting to areas under British control or with a then already mainly English speaking population. Angrily, the German imperial government strove to monetarise its population loss by assigning the fictitious value of 800 US\$ to every German émigré.¹¹ German statisticians and demographers did note that, at the same time, there was massive in-migration to the German Empire, specifically from Poland, the Balkans and Italy. But they hastened to add that the alleged monetary value of the in-migrants was inferior to the purported value of the lost German 'subjects'.¹² A migration-sending state was frequently described as overpopulated and haunted by poverty and other social evils. By contrast, a migration-receiving state was often defined as an apparently open land, seemingly available for occupation by incoming migrants.¹³

In conjunction with these nineteenth-century theories of the state, residentialism induced social scientists to study migration in the context of the state.¹⁴ As administrators and lawmakers viewed state populations as *geno* groups of residents, social scientists deemed migration to affect the making and enforcement of state policy.¹⁵ By consequence, the capability of migration policy-making became classed as the hallmark of the state sovereignty. Institutions of the sovereign state became recognised as the sole legitimate agencies for regulating legal migration and preventing what was taken to be illegal migration. Ever since then, the willingness of governments of sovereign states to engage in international cooperation over principles of migration policy-making has been limited. The residentialist perception of migration as a deviant pattern of behaviour has often induced administrators and lawmakers to resort to policies of closing doors in response to migration processes and in an effort to advance state security. The securitisation of migration policy boosted the claim that migration policy-making ought to be and remain under the control of institutions of the sovereign state even when and where regional integration processes have been ongoing.¹⁶

Admittedly, migrants are no longer being monetarised these days, even though underlying attitudes have continued. While it is easy to understand that negative attitudes towards migration have prevailed, necessarily so within the nation-state paradigm, it is more difficult to judge why some globally operating international organisations and their

11 Herzog 1885, 37. For the US side see Young 1872.

12 Bödiker 1874; Josephy 1912; Mönckmeier 1912.

13 On controversies on the assessment of the size of such land between migrants and administrators see Bickelmann 1991; Bretting 1985.

14 For early studies see the work by 'cathedra socialists', among them Mönckmeier 1892.

15 von Mohl 1847, 322, thought that it was mandatory that 'redundant' people, among whom he classed the poor, should emigrate.

16 Especially within the EU. See Geddes 2000; Tomei 2001.

commissioned groups and agencies have followed the paradigm as well. As late as in 2003, the international Commission on Human Security, working under UN auspices and mandated to develop a person-centred concept of security,¹⁷ set out to prove that '[m]assive population movements affect the security of receiving states, often compelling them to close their borders and forcibly prevent people from reaching safety and protection'.¹⁸ The Commission did so by pointing out dangers of 'terrorism', the 'trafficking in and smuggling of people, and the 'HIV/AIDS crisis'.¹⁹ Contextualising migration with crime and disease, the Commission sought to specify the danger of and reasons for migration. It spotted the danger in migration-receiving states alone and established the reason that the 'growing inequity between and within countries affects the displacement pattern'.²⁰ The term 'displacement' is revealing. Taken literally it categorises migrants as powerless and passive people being pushed and pulled around and deviating or having to deviate from the norm of residentialism. In other words, the Commission followed conventional nineteenth-century negative attitudes towards migration that rested on the assumption that residence is 'normal' and migration deviant resulting from the lack of willingness or capability to abide by the residentialist norm.

True, the Commission went beyond established state migration policy in demanding that 'people must be able to enter another country', if they want to make use of their human right to emigrate.²¹ It also lamented the 'absence of an international migration arrangement', recognised the human security of migrants as the paramount goal of orderly and predictable migration policy-making, and criticised the predominance of restrictive measures aimed at curtailing in-migration to the end of enhancing state security.²² However, the Commission retained the conventional position that the principles of migration regulation should be administratively imposed and that it should be the task of governments to ensure 'orderly and predictable movements of people'.²³ In refusing to distinguish thoroughly between orderly and predictable migration and orderly and predictable migration policy, the Commission put on record its conviction that without proper management at the national and the global levels, migration is a deviant and disorderly pattern of behaviour. Thus despite its global outlook, the Commission employed a fully state-centric concept of migration. Consequently, it knew only two categories of migration, again drawing for them on nineteenth-century beliefs. These two categories were migration within a state and migration across international borders. The

17 Commission on Human Security 2003, 2-4.

18 Ibid., 42.

19 Ibid., 42-4.

20 Ibid., 44.

21 Ibid., 45. As enshrined in the Universal Declaration of Human Rights of 1948.

22 Ibid., 45.

23 Ibid., 52.

Commission correctly observed that ‘movements within borders are considerably larger than those across them’.²⁴ But that is what Ernest George Ravenstein had already known at the end of the nineteenth century.²⁵ Obviously, there is nothing wrong with restating common knowledge. But, in doing so, the Commission did bad service to its stated purpose of constituting the human individual as the core recipient of security, because it reaffirmed the crucial significance of border control for the security not of migrants but of the state. Thus the Commission completely overlooked the fact that, since the end of the nineteenth century, regions have emerged as a significant spatial entity within which migration has often taken place.²⁶ Even though the Commission acknowledged the need for ‘developing ... regional norms for the movement of people’,²⁷ it ignored the regional dimension of migration because it declared sacrosanct the given international borders of sovereign states and thus failed to take into account the border-making and border-destroying effects of the doings of migrants defining their own transnational social spaces.

Moreover, migrants as recipients of human security have become the subject of the report by the Global Commission on International Migration, released in 2005.²⁸ This Commission called for the recognition of migrant remittances as a factor of development but overlooked that its call merely continued the conventional distinction between migration-receiving and migration-sending countries. It also defended the entitlement of governments of sovereign states to combat irregular migration and migration-related crime. It even supported the conservative demand for the ‘adaptation and integration’ of migrants at their destinations, regardless of migrant intentions. It finally proposed ‘greater consultation and cooperation between states at the regional level, and more effective dialogue and cooperation among governments and between international organisations at the global level’, but gave credit to governments of sovereign states as sole legitimate decision-makers on migration policy.²⁹ The report contains frequent references to con-

24 Ibid., 41.

25 Ravenstein 1876, 173-7, 201-206; Ravenstein 1876, 229-3; Ravenstein 1885; Ravenstein 1889. For a twentieth-century variation of Ravenstein’s ‘Laws’ see Lee 1969, 282-97; White and Woods 1980, 1-7.

26 For the regional dimension see the case studies of East Central Europe by Bade 1980a; 1980b; Bade 1980c; Bade 1982; Bade 1983; Bade 1984; Bade ed. 1987; Bade 1988; Bade 1989. Bade’s papers were drawn on his Habilitationsschrift, Bade 1979.

27 Commission on Human Security 2003, 47; here again interutilising migration and migration policy.

28 Global Commission on International Migration 2005, 4.

29 Ibid., 4.

cerns for migration-related crime³⁰ and the emergence of social unrest if large numbers of disintegrated in-migrants reside in a host country.³¹ The report is thus necessarily cast into the language of push-and-pull factors alleging economic migration motives.³² Yet the Commission showed no willingness to address questions of the political participation of migrants in their host states and did not consider regional institutions as actors in migration policy-making. Moreover, it failed to balance government interest in security provision against migrant interest in the pursuit of livelihood strategies and rights related to personhood.³³ It thus operated within conventional perspectives on migration, advocated conventional, if not straightforwardly conservative agendas and amply put on record its readiness to support top-down decision-making with respect to migrant affairs.

The Global Commission on International Migration joined the international Commission on Human Security in positioning international migration at the interface of the decision-making of national and global institutions of governance. In addition, both commissions displayed little awareness of the regional dimension of the doings of migrants. They called for more intensive cooperation on migration-policy decision-making among governments of sovereign states at the regional level and praised the European Union for having eased internal migration.³⁴ The Global Commission on International Migration went a little further and mentioned in passing NAFTA, ECOWAS and SADC as regional integration schemes concerned with migration issues and even pleaded for placing migration issues 'on the agenda of all regional bodies'.³⁵ But such pleas are cheap, unless they are supported by the request for the institutionalisation of migration-policy decision-making at regional levels, and unless they are substantiated by analyses of the bottom-up effects that migration can have on regional integration.

The close to complete lack of concern for the regional impacts of migration is not surprising given the dominance of Western social science paradigms in migration research and policy-making. For example, the pre-eminence of the US academic community in migration studies during much of the twentieth century has contributed to constituting long-distance inter-continental migration as the main focus of social-science research. Even though Mexican in-migration to the USA has attracted some scholarly atten-

30 Ibid., 11, 15, 32, 33, 39.

31 Ibid., 8, 33, 43, 44-9. The Commission went so far as to even apply conservative anti-migration rhetoric in demanding 'language training' as an instrument to accomplish the integration of migrants (47).

32 Ibid., 5, 6, 9, 12.

33 See Watanabe 2006.

34 Commission on Human Security 2003, 47. Global Commission on International Migration 2005, 71.

35 Global Commission on International Migration 2005, 72.

tion,³⁶ the bulk of US migration research has had a global or at least trans-Oceanic perspective.³⁷ One reason for the lack of concern of migration research for regional issues is manifest: Up until 1997, no regional institution or regional integration and cooperation scheme had a specific migration policy of its own.³⁸

Nevertheless, considering migration from the point of view nineteenth-century nation-state political theory has neither promoted the effectiveness of the implementation of policy nor advanced the understanding of migration processes. Germany is the case in point. Governments of some eighteenth-century German states used to conduct an active and often aggressive in-migration policy, seeking to attract non German-speaking immigrants from elsewhere in Europe³⁹ or to dispatch German-speaking groups to military outposts in the Balkans.⁴⁰ In doing so they competed with the Russian government that, under Tsarina Catherine II., was the most active in-migration promoting European government of the time. The competition created a migration market in which success in the attraction of migrants counted as evidence of the legitimacy of government. For example, Mennonites who had migrated from the Netherlands into territories under Polish rule in the Vistula Delta moved on to Russia after the first partition of Poland in 1772, when they came under Prussian control. They did so because they feared that the Prussian government might waive the religious freedoms they had received from the previous Polish government and expected that the Russian government would grant them the same freedoms.⁴¹ The migration market ended in the course of the nineteenth century when

36 On Mexican-US migration see Corwin ed. 1978; Dauvergne 2003; Ehrlich, Bilderback and Ehrlich 1979; Jones 1984; Boutang, Garson and Silberman 1986; Neumann 1996; Pozo ed. 1986; Taylor 1987.

37 For comprehensive historical studies see Eriskson 1976; Erickson 1994; Grabbe 2001; Hoerder 1985; .Hoerder and Rössler eds. 1993; Hoerder 1993; Hoerder 1994; Marchalck 1973; Moch and Moch 1992.

38 Migration was established as an issue for EU policy-making through the legal framework of the Amsterdam treaty of 1997. See Hailbronner and Thiery 1998.

39 von Justi 1969. On Justi and the formulation of population policy in the eighteenth century see Bollnow 1941; Dreitzel 1987; Frensdorff 1970; Klueting 1986; Overt 1992; Remer 1938.

40 Emperor Leopold I, [Mandate on the settlement of Hungary, print, August 1689], Ulm, Donauschwäbisches Zentralmuseum. On imperial population policy respecting the Balkans see Beer and Dahlhausen eds. 1999.

41 Tsarina Catherine II, [Manifesto to Promote Immigration to Russia, print, 25 July 1763], Stadtarchiv Ulm, A 3889, fol. 3r-4v. The file includes reports on the activities of recruitment officers in Russian service active in the city of Ulm. Becker 1962; Epp 1981; Keller 1905; Stach 1904, 5-9; Stumpp 1972, 14-5; Wiegandt 1941, 102-104. On Mennonite migration see below, note 44.

German governments enforced racially biased restrictive admission procedures, often underpinned with Anti-Semitism, against in-migrants from Poland, the Balkans and southern Europe. In-migration policy became fused with nationality legislation designed to constitute a purportedly 'racially pure' state population (Volk) for the German Empire.⁴² Not surprisingly, German domestic law has never differentiated between nationality and citizenship. Blood-and-soil ideologies have fuelled the concoction of an exclusionist notion of nationality, defined in racial terms, and have constituted the false image of Germany as a non in-migration state. The German Volk became portrayed as a *geno* group of residents to whom, in the medical language characteristic of German public migration discourse, migrants might do harm to the nation as viruses infect the human body.⁴³ Thus the ideological and linguistic foundations for the Holocaust were the radically nationalist political theory and the residentialist migration policy resulting from it at the turn of the twentieth century.

Despite its morally indefensible implications, the image of Germany as a non in-migration state has prevailed beyond World War II and is still informing policy debate on migration. During this period, administrators and lawmakers have displayed substantial ingenuity in developing odd conceptual distinctions for in-migrants. The most notorious among them are the *Gastarbeiter* ('guest workers'), the *Asylsuchende* ('asylum-seekers') and the *Spätaussiedler* ('returning expatriates'), many of them descendants of eighteenth-century out-migrants to Russia.⁴⁴ These distinctions have existed for the sole purpose of de-categorising in-migration through statistical manipulations, designed to keep the number of legally admitted in-migrants low. In-migrants mainly from Turkey or the Balkans were not admitted as resident aliens as they received the status of (temporary) 'guest workers' or asylum-seekers, whereas aliens in-migrating from the former Soviet Union were categorised as Germans even though most of them neither held German nationality nor had a decent knowledge of the German language. Nationality legislation has awarded legal validity to these racist distinctions thereby widening the gap between the administrative handling of migration and the self-perception of the migrants destined for Germany. Difficulties in law enforcement and an acrimonious domestic debate on

42 On German nationality legislation see Breuilly 1998; Brubaker ed. 1989; Brubaker 1989; Brubaker 1992; El-Tayeb 1999; Gosewinkel 1995a; Gosewinkel 1995b; Gosewinkel 1998; Gosewinkel 2001a; Gosewinkel 2001b; Krombach 1967; Mommsen 1996; Wildenthal 1997; Wippermann 1999. For a critical review of Brubaker's arguments see Fahrmeir 2000.

43 *Stenographische Berichte über die Verhandlungen des Reichstags*, 13. Legislaturperiode, 13. Sitzung (23 February 1912), S. 250, 259-261, 271.

44 On the early nineteenth-century German migration to Russia see Bartlett 1979; Brandes 1991; Brandes 1993; Brandes 1994; Gestrich 1991; Gestrich 2000; Gestrich and Lächele 2004; Keller 1968; Klippenstein 1989; Rempel 1933; Tiggesbäumker 1983; Wellenreuther 2000.

migration policy have been among the results. Decision-making and legislation on migration policy took place in Germany without consultation with EU institutions.

Historians and social scientists began to campaign against the false image of Germany as a non in-migration state in the 1990s,⁴⁵ without showing willingness to liberate themselves from the legacy of nationalist conventions. Hence it did not come as a surprise that the political demand for recognising in-migration to Germany as a fact triggered the setting of restrictive conditions for integration.⁴⁶ The controversy between Yasemin Soysal and Christian Joppke is proof of evidence. In her well-known 1994 publication on the Limits of Citizenship Soysal argued for the necessity of accepting deterritorialised 'personhood' as the basis for the allocation of 'citizenship' in contradistinction to nationality. She rejected the legitimacy of attempts to 'build nations' through top-down administrative and legislative measure and, in lieu of these measures, requested a 'postnational' model of citizenship that 'confers upon every person the right and duty of participation in the authority structures and public life of a polity, regardless of their

45 Bade ed. 1993.

46 The debate peaked in the government-sponsored immigration bill, which went into force on 1 January 2005 after the conservative opposition forced the government to revise its initial proposal in 2003. The law stipulates 'integration' as the sole admissible goal of migration policy and does so in line with conservative concerns for the maintenance of the homogeneity of the Volk. In conjunction with the nationality act of 1999, the immigration law sets a workable knowledge of the German language and acceptance of the 'liberal democratic basic system of norms and values' as conditions for the 'integration' of in-migrants. It even forces in-migrant recipients of German social welfare benefits to attend special courses in German language, culture and civics and thereby even overturns the nineteenth-century principle that the welfare state should be blind to nationality. For the German nationality act of 23 July 1999 see Bundesgesetzblatt, (1999), Part I, pp. 1618ff., and the Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthaltes und der Integration von Unionsbürgern und Ausländern, 5 August 2004, in Bundesgesetzblatt (2004), Part I, Nr 41, pp. 195-2010, especially §§ 1, 12. The immigration act had the effect of changing core clauses of the nationality act. Its revised version went into force on 1 January 2005. These positions were reiterated in the agreement by the coalition of the Christian Democratic Union and the Social Democratic Party on the formation of a coalition government on 11 November 2005. For a critical review see Behr 1999.

historical or cultural ties to that community'.⁴⁷ She drew her request on the observation that the factual granting of partial political participation rights to the so-called 'guest workers' in some postwar European states was irreconcilable with the older nationalist theory of the state and the migration policies resulting there from. She concluded that the respect for personhood was recognisable and that its recognition was eroding the existing conventions of migration policy-making and the legitimacy of nationality legislation. In his response to Soysal, published in 1999, Joppke denounced her diagnosis as multiculturalist and flawed and used German evidence to support his conventionalism that 'immigration does not render obsolete national citizenship' (whatever that may be).⁴⁸ Against Soysal, Joppke insisted that, contrary to the USA, Germany was a 'non-immigrant nation', facing only late in the twentieth century what wrongly appeared to him as the new phenomenon of immigration. He went so far as to even adduce the partition of Germany as the core factor seeming to make it impossible for the German government to develop a morally defensible immigration policy. Unwilling to admit that the partition had been a response to German crimes against humanity during World War II, Joppke resorted to apology, claiming, without proof of evidence, that in Germany, migrants were not allowed to participate in the opportunity structure of state and society and that the governing elites were oscillating between integrationism and more or less explicit xenophobia.⁴⁹ Either attitude, he concluded, was contrary to Soysal's diagnosis. But Joppke not only got the German evidence wrong but also Soysal's argument. Over more than two hundred years of German history have not supported the nationalist political argument that Germans were a 'non-immigration nation', in-migrants to Germany have participated in the opportunity structures offered by state and society,⁵⁰ and Soysal was far from endorsing demands for multiculturalism. Instead she demanded in universalistic terms that migrants should be given an equitable choice whether or not to want to integrate and that, in either case, they should be granted political participation rights drawn on citizenship. By contrast, Joppke posited integration through assimilation as the sole legitimate goal of migration policy and classed migrants' rejection of the request for integration as a lack of willingness to engage in political processes. In short, where Soysal took the bottom-up point of view of migrants, Joppke argued from the top-down point of view of governments of sovereign states.

47 Soysal 1994, 3. Soysal 1999. Anthropologist Aihwa Ong has called attention to phenomenon of postnational citizenship in its consequences for governance. Her argument is that postnational citizenship is 'flexible' and supports the formation of autonomous zones of governance. See Ong 1999; Ong 2005, 257-260. The theory of nation-building had been advanced by Deutsch 1969.

48 Joppke 1999, 186-7.

49 Ibid., 187.

50 On participation and the use of opportunity structures in Germany and the EU see Blätte 2006.

The parochialism of German sociological and political science research on migration is evident from this debate.⁵¹ Given the difficult moral legacy of the Nazi period, the German case makes most dramatically clear the principal problems of looking at and dealing with migration from the point of view of the state and within the confines of nineteenth-century political theory. In demanding personhood to become the basis for the making and enforcement of migration policy, migrants are transnational actors who call into question the three fundamentals of nation-state political theory. Moving across international borders, they flexibilise the state population, thereby jeopardising its perceived unity; they blur international borders, thereby calling into question the unity of state territory; and through their daily activities they limit the executive capabilities of governments of sovereign states.

III. MIGRANTS AS ACTORS IN THE SOCIAL SCIENCES

We all know – and the controversy between Soysal and Joppke has made it again abundantly clear – that, due to migration, government-led integrationist national identification can hardly in the short term absorb the empirically existing multiplicity of collective identities. National identification thus enhances rather than diminishes the clash of cultures between residents and in-migrants as the perceived struggle between insiders and resident outsiders,⁵² forces upon in-migrants the choice of either becoming fully naturalised insiders or leaving,⁵³ widens the gap between what seems to constitute regular residential and what appears as the deviance of migrant patterns of behaviour from the point of view of administrators, lawmakers and social scientists,⁵⁴ and fuels the con-

51 For similarly parochial statements see Hailbronner 1989; Hailbronner, Martin and Motomura 1998; Bommers 1999. For a more internationalist position see Behr 1998; Behr 2005.

52 On the debate about exclusionism see Alderman, Leslie and Pollman 1992; Bader 1995; Cole 2000; Faist 1994; Faist 2000; van Gunsteren 1998; Itzigsohn 2000; Joppke 1999a; Silverman 1992. For a review of immigration restriction policies see Freeman 1994; Hollifield 1992, 214-32. Joppke 1998; Miller 1994; Weiner 1996.

53 The choice is explicitly imposed upon in-migrants in the report by the Global Commission on International Migration 2005, 48.

54 For a classical case of residentialism in recent social science studies see the article by Simon 1993, 109-110, who sets as the basis for his analysis 'an idealized farming "nation" composed of a hundred identical farmers' forming a community of residents. On migrationism and residentialism see Adams, Van Gerven and Levy 1978; Ehmer 1998. For striking parallels of migrationism in medieval and early modern Europe see Howe 2001; Kleinschmidt 2003, 27-31, 87-102, 165-70.

flit between interests of persons and demands of collectives.⁵⁵ Rather than performing as mediators, social scientists have, in my view, too often taken the position of the state.

First and foremost, this has been due to the dominant type of sources or 'data' that social scientists have preferred to use. As a consequence of their felt need of quantification, they have positioned the individual migrant behind the impenetrable veil of statistics. To put it bluntly: in the social sciences, the individual migrant as a personal actor hardly exists. The lack of concern for and interest in the individual migrant has entailed a number of problems. They begin with the simple questions who a migrant is and how long one remains a migrant. A seemingly easy solution is the straightforward application of the UN-sponsored administrative practice of counting everyone as a migrant who has relocated his or her residence across an international border for more than one year.⁵⁶ Whereas this pragmatic definition may have many merits for administrators, it retains the difficulty that, like many other migration-related concepts, it is imposed externally upon migrants. No one applying this definition of a migrant bothers to confirm whether the persons upon whom this definition is being imposed actually perceive themselves as migrants. There are serious doubts whether pragmatic concepts that may be useful for administrators are also good for social scientists who, after all, should be willing to understand and analyse rather than administer migration.

The relatively well-researched Mexican out-migration to the USA gives food for thought. Out of the 500,000 or so people⁵⁷ who enter the USA without proper documentation every year, there appear to be many who cross the heavily guarded Mexican-US border and do so, if not regularly, but at least repeatedly. Many of them are migrants according to the UN-sponsored definition, even though they seem to shuttle back and forth, pretty much at their own discretion and as if the border were not there at all.⁵⁸ To my knowledge, no survey has ever been done determining how many of these border-crossing people have the positive subjective consciousness of being in-migrants to the USA or remigrants to Mexico. Even though the current Mexican-US border has been in existence for more than 150 years, it remains a fact that the southwestern territories of

55 Among other instances, legal battles over the choice of seemingly appropriate dress codes by teachers and pupils in schools in France and Germany since 2001 have displayed this conflict. The German constitutional court, revoking all previous decisions by lower courts, ruled on 24 September 2003 that the imposition of specific dress codes for schoolteachers through governments is unconstitutional.

56 Global Commission on International Migration 2005, VIII. For the social-science debate on migration definitions see Amar and Milza 1990. Blanke ed. 1993; Blaschke 1994; Bös 1996; Carens 1992; Favell 1998; Goodwin-Gill 1986; Marschalck 2000; May 1994; Miller 1994; Sassen 1999; Segal 1993; Verhaeren 1990; Weiner 1985; Zlotnik 1987.

57 Global Commission on International Migration 2005, 33.

58 On Mexican-US migration see above, note 36.

the USA were wrought from Mexico by force and irredentist attitudes have flourished.⁵⁹ Beyond history and politics, the intensity of border-crossing activities has helped establish and maintain networks and personal ties that link people across the international border and create a transnational social space that appears in the minds of the border-crossers but not in administrative records. A regional transnational social space is in the making that straddles the Mexican-US international border. If economic disparities serve as additional incentives, no social scientist will be surprised to find that migration restriction measures have little long-term effect. Social scientists could do a better job if they tried to uncover the person behind the statistics and could thereby determine just how many of the border-crossers have the subjective consciousness of being migrants.

However, imposing the identity of migrants on border-crossers is not the only adverse effect of national identification. Equally significant is the allocation of the status of aliens or resident aliens to international migrants at their destinations. The merits of the distinction between insiders and outsiders for administrators are obvious. When registering persons, administrators have to follow identification documents that can only be issued by government agencies. Yet, already in 1908, sociologist Georg Simmel observed correctly that the alien is a person 'who comes today and stays tomorrow',⁶⁰ that is, someone who blurs the conceptual boundary between inside and outside. Because the resident alien is an inside outsider the entire debate among social theorists about inclusion vs. exclusion misses the point as long as it fails to take into account the subjective consciousnesses of migrants.⁶¹ Migrants may wish to remain outsiders, they may wish to become insiders or may prefer to choose any in-between status. Social scientists should be able to determine who wants what. Once again, the assumption is far from obvious that all Mexican nationals crossing the US border without proper documentation regard themselves as aliens on US territory. But it is precisely this assumption on which administrative procedures rest that confer upon these border-crossers an alien status.

It is at border checkpoints and registration offices that administrators and lawmakers

59 On the US-Mexican War (1846 – 1848) see Butler 1994; Christensen and Christensen 1998; Garrett and Goodwin 1995; Johannsen 1985.

60 Simmel 1992, 764. For studies see Papastergiadis 2000, 62-9; Wood 1934. *Zwischen Räumen. Studien zur sozialen Taxonomie des Fremden* (Munster: LIT, 1999) (Berliner Blätter. 19.)

61 Collinson 1993, 100-104. Collinson 1994, 43-63; Geddes 2000, 120. Luhmann 1994; Miles and Thränhardt eds. 1995. Schuck and Rainer Münz eds. 1998. For further literature on exclusionism see above, note 52. The conventional view that the welfare state is in legal need for exclusionist migration restrictions in order to be able to operate for the benefit of its citizens was upheld by Gibney ed. 1988, 34, and Bommers 2000, 1, who defended the necessity of immigration on the grounds of maintaining the stability of states and population groups as nations and democratic legitimacy.

can implement their extensive skills in developing the full scale of categories for the assignment of resident or migrant statuses in contradistinction to the often-fuzzy subjective consciousnesses of migrants. Some of these categories are not mutually exclusive. Much to the dismay of administrators and lawmakers, for example, someone classed politically as an 'economic' migrant may appear at the international border of a state under the legal status of an 'asylum-seeker'. Or someone in-migrating legally on a student visa may in fact have already been employed illegally in a 3D [dirty, demanding, dangerous]-job.⁶² Social scientists may be better able to analyse migration processes if they check these administrative categories against the self-perceptions of migrants.

Moreover, migration statistics usually place all international migrants into one roof category that then usually gets subdivided according to the nationality or citizenship of the registered border-crossers. Again, the feasibility of this procedure for administrators is evident even if not all movements across international borders are actually controlled. But social scientists should be able to differentiate. A migrant legally crossing the German-Polish border in search for employment on the other side may nowadays moves within the same region whose history goes back a long time before the establishment of the current border.⁶³ Is it helpful to place these border-crossers into the same class as people coming to Europe from other continents? Some statistics and studies differentiate between migration within the EU and migration to and from the EU and non-EU countries. But does this distinction matter for the people who cross the border into Switzerland and Liechtenstein from France, Italy, Austria and Germany? Distance may not matter for migrants choosing their destinations.⁶⁴ But what is true for intercontinental migration and its consequences may not necessarily have to be true for cross-border migration in a local area.

A further set of categories imposed upon migrants relates to motives. Social scientists have often concurred with administrators and lawmakers in making efforts to find out why people move. Specifying migration motives has dominated research initiated to the end of increasing the impact of migration legislation and the consistency of law enforcement. But much of that legislation has been effected under the goal of restricting migration. The time-honoured mid nineteenth-century physicalist push-and-pull model has continued to inform much research on migration motives⁶⁵ even though the salience of applying the model has been called into question since the 1980s.⁶⁶ The problem with this model is not that it rests on entirely wrong assumptions but that the push-and-pull factors it seeks to coordinate have usually been inferred from statistical data or temporal

62 See Shuto 2006, 216-7.

63 Takahashi 1998; Takahashi 2006.

64 Bauzon 2006.

65 For an early recording in the London Times of 1851 see Abbott 1969, 126.

66 Fielding 1992; Fielding 1993; Zolberg 1981.

coincidence rather than proved.⁶⁷ Usually, income disparities or acute food shortages are seen as major push factors. However, for over 200 years only a few migrants have actually been asked about their migration motives before they started to move.

Indeed, it may be important for administrators not to pay too much attention to declarations by in-migrants at border checkpoint or by would-be migrants at consular offices. But social scientists should take a broader view, particularly if they intend to be of service to administrators. First and foremost, the broader view demands an answer to the question whether migrants have a motive at all and, if they do, whether it is economic in kind. The suggestion that migrants have to have a motive follows from the residentialist belief that humans are by nature settled and that, by consequence, any apparent deviation from that norm requires explanations. But this belief is far from obvious. In the European context, migration was considered as a behaviour perfectly compatible with human nature down to the end of the eighteenth century. At the time, superfecundity theory supported the view that migration was divinely willed.⁶⁸ Governments did not take seriously the doings of the 10% or so permanent migrants among the resident population under their control, even though they were keenly aware of the fact that deserting soldiers and various kinds of criminals could find shelter among vagrants.⁶⁹ Residentialism began to inform government attitudes towards migration in Europe only at the beginning of the nineteenth century.⁷⁰ Saying that migration does not have to have to result from specifiable motives is not to suggest that there is something wrong with searching for migration motives. Yet the demand follows that migration researchers should ask the two questions of why people are moving and why other people are staying. It has long been known that the migration potential is higher than the actual migration rate.⁷¹ If that is so, some people have to have a motive to stay that is stronger than their motive to move. Put differently: migration takes place after persons have decided to rank their motives to move above their motives to stay. Studying migration decision-making⁷² at the level of the individual means developing a focus on personhood and the pursuit of live-

67 In an historical context especially by Bade (note 26).

68 Süßmilch 1765, 396. For a nineteenth-century criticism of the theory see Sadler 1830, 171.

69 Ay 1979; Beier 1974; Beier 1986 Dinges 1988 ; Geremek 1974; Graus 1981; Hergemöller ed. 1990; Hergemöller 2000; Hobsbawm 1959; Jütte 1994; Küther 1983; Pound 1971; Rheinheimer 2000; Roeck 1993; Schubert 1995 Vexliard 1956.

70 Avé-Lallemant 1998), esp. vol. 1, 11; Adams 1990; Hufton 1974; Saurer 198; Schepers 1998, 244-6; Titz-Matuszak 1988; Ulbricht 1994.

71 Davis 1974, 96. Restated by Zolberg 1983, 232.

72 The literature on migration decision-making literature usually takes the statistical approach. See Berninghaus and Seifert-Vogt 1991; De Jong and Gardner 1981; Mincer 1978; Sell and DeJong 1978.

lihood strategies.⁷³ The availability of networks among migrants and settlers may be a powerful migration stimulant that can jeopardise the implementability of restrictive migration policies.

To the extent that international migration results from specifiable motives and not merely from a diffuse intention to move, social scientists should allow migrants to categorise their motives by themselves rather than making them choose among administratively imposed categories. This, however, has hardly been done. First among the few studies investigating motives at the onset of a migration is Friedrich List's work on emigration from Württemberg in southwest Germany in 1816 and 1817.⁷⁴ Having heard of a movement for emigration in 1816, the King of Württemberg became worried why his 'subjects' were seeking to leave the state, and dispatched List as a then subordinate administrator to the area where most of the would-be out-migrants were believed to live. List was able to interview some would-be out-migrants and produced a survey that surprised the king no less than it should surprise social scientists of today.

The Württemberg economy was depressed at the time following the Napoleonic Wars, and statistics show an unequivocal temporal correlation between the preparations for the out-migration and a hunger crisis in the area. However, most of the out-migrants, whom List interviewed, explained to him that they intended to leave, not because of want of food or economic hardship but because of dissatisfaction with local authorities. They accused local office-holders of corruption, abuse of power and lack of competence.⁷⁵ In short, the most frequently stated migration motive was political in kind, even though the statistical inference suggests the predominance of economic migration motives. In addition, further archival research has revealed the desire to obtain the freedom of religious practice as a motive for out-migration, specifically among radical Protestants.⁷⁶ Therefore, migration researchers who mainly rely on statistical sources for their work can hardly obtain insight into the full complexity of migration motives.⁷⁷ Württemberg may not have been unique. The conspicuous failure of the Assisted Passage program through which British local authorities tried to push impoverished people out of their counties early in the nineteenth century, points to the same lack of dominance of

73 Among others see Stalker 2000; Massey, et al. 1993; Massey 1990a; Massey, 1990b; Massey et al. 1998. On migration networks see Fawcett 1989.

74 List 1989, 97, 100, 126-7, 175-87.

75 Ibid.

76 Gestrich, 'Rußlandwanderung' (note 44), 110-3.

77 Among others see von Hippel 1984, 178, fig. 8, who believes that hunger drove people out of Württemberg.

economic migration motives and thereby contradicts migration research orthodoxy.⁷⁸ Economic migration motives thus should be ascertained rather than inferred.

Shifts in research paradigms have added to the demand to ascertain migration motives. From the 1980s, 'new migration' has contributed to the obsolescence of many of the residentialist attitudes to migration, primarily among social scientists, while administrators and lawmakers have remained largely unaffected. Proponents of 'new migration' have emphasised the need for a transnational perspective, tracing the doings of migrants beyond borders. They have promoted the recognition of migrants as autonomous, well-informed and determined actors interconnecting spaces in pursuit of livelihood strategies.⁷⁹ Migration systems have emerged at regional levels blurring the conventional distinction between sending and receiving countries and constituting migration as an indefinite process rather than as a sequence of separate finite 'flows'.⁸⁰ Simultaneously with 'new migration', 'new security' thinking has reduced the military component in the notion of security and established the individual as the core recipient of security.⁸¹ International migration has evolved as the central issue of human security at the national and the global level.⁸² Although neither 'new migration' nor 'new security' thinking have so far taken into consideration regions as the theatres of transnational actors, the recently finalised PIONEUR project has shown that some migrants act as bottom-up regional actors in the EU, if they are willing to interact with residents in their host groups and areas. The project also confirms that economic migration motives do not necessarily dominate decision-making processes but may rank second to family union and may be

78 On the Assisted Passage programmes and their failure see Haines 1991. For criticisms of push- and pull-theories see Bade 1984a, 57-8; Canny ed. 1994, 263-83; Castles 1992; Fertig 1993; Guinnane 1997; Hochstadt 1996, 144-5; Jackson and Moch 1989, 27-8; Kleßmann 1978, 24; Morawska 1990, 192-3; Zolberg 1981.

79 For details see Watanabe 2006 (note 33).

80 On 'New Migration' see Boeles 1997; Bretell and Hollifield eds. 2000; Cohen 1997; Cornelius, Martin and Hollifield eds. 1994; Foner, Rumbaut and Gold eds. 2000; Gould and Finlay eds. 1994; Jadoul and Mignon eds. 1993; King 1993; Mittelman 1994; Schiller, Bausch and Blanc-Szanton eds. 1992; Siddique and Appleyard 2001; Weiner 1995; Zolberg 1989. On migration systems see Kritiz, Lin and Zlotnik 1992.

81 On 'New Security' see Adler and Barnett eds. 1998; Alagappa, 2003; Baldwin 1997; Booth 1991a; Booth 1991b; Booth ed. 1998; Buzan 1993; Buzan 1997; Buzan and Wæver 2003; Jesse-Petersen 1994; Katzenstein ed. 1996; Krause and Williams 1997; Miller 1998; Poku, Renwick and Glenn 2000; ul-Haq 1999.

82 Weiner ed. 1993.

equal to the betterment of the quality of life.⁸³ If migrants, when crossing the international borders of states, are by definition transnational actors, they must have an impact on the making and transformation of transnational social spaces in the regions within which they move most frequently.

IV. SOME OBSERVATIONS ON THE REGIONAL DIMENSIONS OF MIGRATION

National demographic statistics obfuscate the regional dimension of international migration. For one, the official statistics compiled by the German government do not indicate a definition of migration. Neither do they specify destinations for out-migrants nor indicate declared reasons for in-migration. Instead they merely state the nationality of in-migrants residing on German territory.⁸⁴ Nevertheless, some observations on the regional dimension of migration remain possible elsewhere. The British National Statistics is explicit in admitting that migration data have been assembled on the basis of the UN-sponsored definition of migration⁸⁵ and reveal a generally increasing net in-migration during the decade from 1994 to 2003. The net demographic gain from in-migration to the UK was 223,000 people in 2004, up 72,000 against the figure for 2003.⁸⁶ In that year, of the 512,600 people migrating to the UK, 105,800 were British citizens, 64,000 EU citizens other than British, 165,800 Commonwealth citizens and 196,900 others (including people from Hong Kong). Of the 361,500 out-migrants from the UK in 2003, 190,000 were British citizens, 49,900 EU citizens other than British, 58,000 Commonwealth citizens and 62,000 others.⁸⁷ The figures suggest the net out-migration of 85,000 British citizens against the net in-migration of 14,100 EU citizens other than British, 110,300 Commonwealth citizens and 134,900 others. As the category of EU citizens excludes people with British citizenship, the real number of migrants between the UK and the EU is higher than the stated figures, if the assumption holds true that British citizens also migrate to the rest of the EU and back. For all these figures the

83 Even the International Organization for Migration has limited itself to advocating closer cooperation among governments of sovereign states at the regional level. See IOM 2001. On the PIONEUR project see Santacreu, Baldoni and Albert 2006. The project reporters have emphasised their surprise about the finding that 2% of the EU population have migrated, which they regard as a deplorably low figure. But they overlook that the share of migrants to the total of the world population is only around 3%.

84 Statistisches Bundesamt 2003, 65.

85 British National Statistics 2005, VI.

86 <http://www.statistics.gov.uk/cc/nugget.asp?id=260> [site visited on 23 April 2006].

87 British National Statistics (note 85), Table 2.1, 4.

absolute numbers as well as the percentage rates increased gradually between 1994 and 2003.

The figures seem to suggest the predominance of migration within the Commonwealth. Thus Australia alone received 62,400 in-migrants from the UK in 2003, more than half of all migrants moving from the UK to Commonwealth states. The figure is less striking for migration from Australia to the UK; yet 40,500 migrants moved from Australia to the UK in 2003, second only to the figure of 44,000 in-migrants from Bangladesh, India and Sri Lanka together. These figures indicate a net in-migration gain of 17,800 people for Australia, who, it may be inferred, were most likely holders of British or Australian citizenship. However, the full range of migration patterns concerning the UK emerges only in view of the figures for migrants to and from non-Commonwealth states. Thus, in 2003, little less than one third of all in-migrants, namely 101,100 people came from the EU, second only to the combined figure for 'other' states (including Hong Kong).⁸⁸ Figures for out-migration from the UK confirm the predominance of migration between the UK and the EU, if Commonwealth countries are excluded. Of 230,000 people leaving the UK to non-Commonwealth countries in 2003, 121,700, that is more than 50%, went to the EU. Moreover, their numbers have increased dramatically since 1994, when 94,800 people came to the UK from the rest of the EU, while 75,600 took the opposite direction. Whereas there was net in-migration from the EU to the UK in 1994, there was net out-migration from the UK to the EU in 2003. By contrast, figures remained virtually unchanged for migration to and from the USA in the same period, hovering around 26,000 and 28,000 in either direction. Thus, recent migration statistics do not support the view that there is some 'special relationship' between the UK and the USA. Instead, they confirm that, beyond the established patterns within the Commonwealth, all statistical indicators show a dramatic increase in the frequency of migration between the UK and the rest of the EU in either direction.

Migration data from Germany confirm this scenario. While official government statistics are parsimonious, the report on migration that the German Federal Government issued annually until 2004 is more elaborate. The report for 2004 lists 520,256 in-migrants from Europe, of whom 98,175 people held German and 133,167 people held EU citizenship (other than German). 35,951 people were in-migrants from Africa, 134,217 from Asia, of whom 23,557 were counted as 'Germans from Kazakhstan'. 51,546 people came from the Americas, of whom 25,895 were US citizens, while 3,846 were registered as in-migrants from Australia and Oceania. For the same year, the report records 434,878 out-migrants to Europe, among them 153,652 moving within the EU, 23,726 out-migrants to Africa, 45,623 to the Americas, 69,563 to Asia and 4,732 to Aus-

88 Excluding Non-EU Europe, the USA, the rest of America outside the Commonwealth and the Middle East.

tralia and Oceania.⁸⁹ The figures confirm net in-migration to Germany from all of Europe, Africa, America and Asia, while they show net out-migration to Australia and Oceania and the rest of the EU. The largest single group of in-migrants producing net in-migration gains in 2003 were Kazakh citizens claiming German descent as entitlement for migration to Germany, and Italian nationals (10,100 people made up the net in-migration gain). 67.7% of all in-migrants to Germany come from Europe, 17.5% from Asia, 7.2% from America, Australia and Oceania together, and 4.7% from Africa in 2003. 70% of all out-migrants moved to another European state, of whom 25% chose EU destinations. Yet the most revealing figures concern migration between Germany and Poland. The numbers of in-migrants from as well as out-migrants to Poland have been highest for any single state sending migrants to or receiving migrants from Germany during the entire decade from 1994 to 2003.⁹⁰ Even at the time of the Bosnian War, there were more in-migrants from Poland than from Bosnia-Herzegovina. Throughout the period, the data show that 90% of the in-migrants held Polish nationality, whereas no nationality specification is available for out-migrants. German-Polish migration makes up 14% of all migration between Germany and any other single state. Of all recipients of newly granted working permits in 2003, 11% were Polish nationals, almost doubling the share of 6% for Turkish nationals.

The figures support the assumption that most of the migrants coming from Poland to Germany are neither remigrants claiming German descent nor 'asylum-seekers' or refugees from third countries using Poland as a transit state. Instead, they must be ranked as the beneficiaries of the PHARE and INTERREG border cooperation schemes that were put into operation with EU funding in 1990 and 1991.⁹¹ Applications for funds channelled into these so-called Euroregion schemes were solicited from local government institutions seeking cooperation across international borders, specifically demarcation lines that were then the outside borders of the EU. Among others, local government institutions in the Neisse/Nysa region, stretching into the Czech Republic, Germany and Poland, succeeded in attracting national government and EU support for their cross-border cooperation projects about the advancement of environmental protection and the establishment of a cross-border labour market. The Neisse/Nysa Euroregion has been an engine for the promotion of cross-border migration since the 1990s. Obviously, migration within this region does not account for all migration occurring between Germany and Poland. But the scheme displays the mutually enhancing interdependence of migration and regional integration at the grassroots level. The data suggest that migration is not

89 Bundesministerium des Innern, Sachverständigenrat für Zuwanderung und Integration and Bundesamt für Migration und Flüchtlinge 2004, 10-1, fig. 2, 3, 16, 17, on pages 16-7, 73-79.

90 88,132 people coming from Poland in 1994, among them 9,486 'Germans', against 103,408 coming from Russia, including 69,965 'Germans'. *Ibid.*, p. 73.

91 Takahashi 2006 (note 63), 251-5.

merely a factor but a definitional element of bottom-up regional integration that is connected with livelihood strategies but unrelated to questions of high politics.

Euroregion cooperation schemes have been widely heralded as the foundation upon which the expansion of the EU could become possible in 2004. But they are not confined to the eastern border of the EU. Instead, there is not a single European state now that is not linked with another European state (this includes Iceland) through cross-border local government cooperation schemes. These schemes are particularly intense at the borders between Switzerland and its surrounding EU countries. The schemes chart the thinning out of border regimes as the core effect of regional integration, regardless of the administrative framework of the EU. They result from bottom-up initiatives of local governments and facilitate migration irrespective of the general direction of state or EU migration policy.

Japanese migration data round off the picture. While most out-migrants holding Japanese citizenship have persistently moved to North America, destinations in the Asia Pacific have been chosen with increasing frequency.⁹² More striking are the figures for alien residents in Japan. Of a total of 1,851,758 registered legal in-migrants in 2003, 625,422 had Korean, 424,282 Chinese and 169,359 Filipino nationality. They represented 1,219,063 people or about two thirds of the total population of legal alien residents. To this figure should be added the numbers of people known by the government to have overstayed their visas by January 2003. The total of these foreigners known to have no proper documentation, was 220,552, of whom 49,874 were Koreans, 30,100 Filipinos and 29,676 Chinese, altogether 109,650 people or close to 50%. There is also a large number of undocumented in-migrants of whom no official records exist.⁹³

The figures display a regional migration pattern in the making. Whereas out-migration from Japan has followed the conventional trans-Pacific venues, with the migration of Japanese nationals to the Western Pacific on the rise, in-migration data disclose East Asia as a region that migrants are creating through their movements. The persistently high in-migration from East Asia to Japan defies all nationalist rhetoric, of which eruptions are recorded every once in a while in the daily media. Not surprisingly, a new notion of East Asia has been advocated for about ten years under the label of ASEAN-PLUS-THREE, blurring the conventional European distinction between East and Southeast Asia. Far from being merely a political or economic scheme, ASEAN-PLUS-THREE is a region emerging from the daily activities of migrants. Not merely because not all of these activities are always and by necessity legal in kind and raise concerns for human security of migrants and residents, but also through the emerging infrastructure of diaspora

92 Out-migrants to North America: 118,541 in 1997, 124,280 in 2002, that is, 44% of the total number of out-migrants. Out-migrants to the Asia Pacific: 25,811 in 1997, 34,549 in 2002. The statistics are from <http://www.kisc.meiji.ac.jp>, based on data from the Ministry of Foreign Affairs (site visited on 23 April 2006).

93 See the sociological and political science studies by Komai 1995; Komai 2001; Taki 2003.

worlds, migrants are creating a transnational social space in East Asia and force governments to concur. Admittedly, the indicators are far from robust. But they are so in consequence of the lack of information about the regional concerns and interests of migrants and the lack of comprehensive and compatible regional migration statistics.

V. THE MIGRATION POLICIES OF REGIONAL INSTITUTIONS

Despite its significance for regional integration, migration features rarely on the agenda of regional institutions or regional cooperation schemes and, if it does, it displays the interests and concerns of administrators and lawmakers of the sovereign states that are joining in these regional institutions and schemes. For example, when the ASEAN Directors General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs (DGICM) gathered for their ninth meeting at Siem Reap-Angkor, Cambodia, from 9 to 11 November 2005, they agreed upon a joint statement that summed up their agenda in ten points. Three of these points dealt exclusively or primarily with crime-related issues, one with the intensification of border control within ASEAN, whereas the remaining six points related to procedural matters such as designating the chairperson of the meeting and the holding of further gatherings and cooperation with other migration-regulating agencies. Merely one point contained a brief reference to the 'movement of tourists, business and professional persons in the region'.⁹⁴ The meeting thus approached international migration from the point of view of administrators and lawmakers. Although, for a decade or so ASEAN governments have been acutely aware of migration as an issue of concern for the region and have variously attempted to regulate labour migration and prevent the trafficking of women, they have done so mostly through unilateral decision-making or by involving such global agencies as the UNDP.⁹⁵

ASEAN is not alone in its state-centric approach to international migration. In the EU, migration policy has rightly been termed a 'by-product of the elimination of border-control' among some EU member states.⁹⁶ Administrators from these states took initiative to abandon border checkpoints in the early 1980s in order to boost domestic support for EU institutions. In 1985 an agreement to that effect was signed at Schengen, Luxembourg. Simultaneously, they have warned that the enhancement of the freedom of

94 Joint Press Statement of the 9th Meeting of the ASEAN Directors General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs, Siem Reap-Angkor, 9-11 November 2005 (<http://www.aseansec.org/17855.htm>), site visited on 1 May 2006.

95 Shuto 2006(note 62), 212-8. On security-related cooperation in Southeast Asia under the auspices of the UNDP see Dosch and Hensengerth 2005.

96 Herz 2006, 236.

movement within some EU member states could only be granted if the external borders of the EU were to be controlled more rigorously. Implementing these administrative concerns through its own legislation, the EU has devised a system of concentric circles subjecting the entire world to various migration regimes. Circle one consists of the so-called Schengen states. Circle two comprises EU states whose governments have not enforced the Schengen Agreements together with states, which have recently acceded to the EU. Turkey, North African states and CIS states make up circle three, considered as territories for transit to the EU. Circle four takes in the rest of the world, from where migration into the EU is to be closely monitored, restricted or even prevented.⁹⁷

Within the EU perspective, international migration beyond EU borders is to take place under strict state control, whenever its destinations fall into circles one and two. Migration restriction clauses are to be negotiated between the EU and governments of states in circle three. To implement migration restriction, the EU established two agencies in 1992, the Centre for Information, Reflection and Exchange on Asylum (Cirea) and the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi). Both agencies have been designed to gather data on undocumented immigration to the EU. The EU has thus advanced intergovernmental Europeanisation in decision-making on migration policy. On occasions, the European Commission has proposed legislation to be implemented in the member states. Some EU proposals have been more liberal than member state regulations and have, consequently, been scrapped by state legislators.⁹⁸

Nevertheless, the EU has conceived and formulated its migration policy to the end of enforcing a strict separation of insiders from outsiders. The system of concentric circles aims at constituting the EU as a super-state with a uniform population of its own, pitched against the outside world. The system thus applies the theory of the nineteenth-century nation-state to a regional institution. EU migration policy is a regressive and top-down instrument for the fabrication of a collective EU identity. Strong political opposition against demands for the recognition of diversity after 9/11 2001 together with controversies over the accession of Turkey and Muslim minority rights in EU member states, combined with the increasing pressure on in-migrants and naturalised EU citizens to 'integrate' display a strong religious and cultural bias inherent in decision-making on migration policy.⁹⁹ In trying to prevent migrants from creating transnational social spaces, the EU attempts to turn the clock back and to advance top-down regional integration without willingness to admit and accept migration. The topic of the making of migration policy at regional levels is wide and warrants a careful analysis of its own. Suffice it here to say that, as yet, there is no empirical case of a regional institution that has shown willingness

97 For a review of the Schengen Agreements and EU migration policy see Geddes 2006 (note 16), fig. 1.

98 Herz 2006 (note 96), 238.

99 Behr 2005 (note 51). Kleinschmidt 2004; Sørensen 1996.

to recognise the capacity of migrants to create transnational social spaces at regional levels.

VI. CONCLUSION

Much of decision-making on migration policy appears to continue following well-trodden paths at national, regional and global levels. Widely heralded and long-cherished negative administrative stereotypes about migrants are holding sway. While 'new migration' has begun to transform academic attitudes towards migration, raising respect for personhood taking into account the autonomous pursuit of livelihood strategies and stimulating respect for autonomous decision-making capacities of migrants have had no more than limited appeal to administrators, lawmakers and some social scientists. Competence to regulate migration has continued to constitute the hallmark of sovereignty, although professional globalists in the UN family have accepted migration as a global issue. The need for inter-government consultation on the making and enforcement of migration policy has been acknowledged, although within a reasoning that connotes migration mainly with deviant behaviour if not crime. Yet most legislative and executive institutions of sovereign states continue to make decisions on migration issues unilaterally, even within the EU. State and regional institutions mutually support each other in conceiving migration policy largely in terms of the enforcement of migration restriction and claim that, in doing so, they are acting for the purpose of providing security to the population under their control. Lawmakers, administrators and some social scientists operate within the legacy of the nineteenth-century European social and political theory of the nation-state.

However, anxieties, fuelled by frightening scenarios of scores of strange, angry and differently looking people *ante portas* have only focused public attention and significance on long-distance intercontinental migration despite the acknowledged fact that only a relatively small number of people move back and forth across continents. Moreover, these scenarios have helped boost disregard for the security of migrants and have therefore been of doubtful legitimacy. Typically, such scenarios have been voiced when increases in the efficiency of border control, concerns for the prevention of migration-related crime and demands for mandatory 'integration' programmes were becoming articulate. But these scenarios have represented international migration as a monstrosity that belongs to the realm of fiction. Many of the measures demanded and implemented have had an explicitly xenophobic touch and have therefore been counterproductive. The recent unilateral decision of the Dutch government to make the passing of a Dutch language test conditional for the issue of residence visas for in-migrants from non-EU states demonstrates that non-EU in-migrants are not welcome in that state. Further exam-

ples from recent times are galore.¹⁰⁰ It is not difficult to predict that such measures will result in an increase of the risk-prone undocumented migration of people determined to move.

Yet there is a further consideration. The unwarranted focus on intercontinental migration, enshrined in much of conventional migration policy-making, has obfuscated not only the significance of migration within regions of various sizes and denominations; it has also prevented administrators, lawmakers and some social scientists from deepening their knowledge of the interconnectedness of migration with security issues and regional integration. At a time when a rapidly increasing number of lawmakers and administrators are busy advancing schemes for regional integration and cooperation virtually everywhere in the world, migration policy is unlikely to be implemented successfully as long as it continues to be classed as the property of sovereign states. If the doings of international migrants make the external borders of sovereign states threadbare and if they flexibilise state populations, they are grassroots creators of transnational social spaces at multifarious regional levels. In this context, it appears to be the genuine task of social scientists to provide for and promote insight into the mutually enforcing cross-effects of migration and regional integration. Without that insight, efforts to increase the human security of migrants as well as residents may be doomed to fail, if only for the theoretical argument that security is not divisible. If security can only be accomplished when it embraces migrants as well as residents, the conventional state-centric attitude to migration policy must be given up.

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100 The government of the Netherlands reviewed its immigration policy under the goal of restricting immigration, with Prime Minister Balkenende advocating the introduction of immigration rules similar to those of Australia in April 2006 (<http://jurist.law.pitt.edu>) [site visited on 16 May 2006] and Immigration Minister Rita Verdonk defending the introduction of the language test with the argument that hopes for the 'integration' of in-migrants have allegedly been unrealistic. Even if Balkenende's government collapsed over its stance on migration policy in June 2006, the resulting political crisis in the Netherlands has not entailed a reversal of anti-immigration policy. In the USA, President George W. Bush has repeated his stance on migration already argued during the presidential election campaign in 2004, when he called for stricter law enforcement against undocumented migrants and more rigorous border control (<http://www.issues2000org>) [site visited on 16 May 2006].

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WORKING PAPERS

THE POLICY PROCESS OF ACCEPTING NURSES AND CAREGIVER-CANDIDATES FROM THE PHILIPPINES TO JAPAN

Yuri HOSONO*

ABSTRACT

This paper examines the policy process of accepting nurses and caregivers to Japan under the Japan-Philippines Economic Partnership Agreement (JPEPA). This study addresses issues including the poor results of the candidates in passing the national licensing exams. In order to find out the causes of the fact, the Advocacy Coalition Framework (ACF) developed by Paul A. Sabatier is applied to analyze the policy process.

Application of the ACF reveals that the policy outcome was the result of compromise between both governments. The Japanese government decided to accept professional nurses and caregivers as candidates to work in Japan; however, they must pass the national licensing exam in Japanese. The JPEPA scheme is a micro policy outcome and is not linked to long-term social policy.

The ACF shows that bureaucrats in Japan took initiative in the policy process, while politicians were dominant in the subsystem of the Philippines. The ACF identifies that relatively stable parameter of institutional differences prevent both governments from changing long-term migration policy.

Furthermore, differences of policy network between the two states and the influence of the policy community at the diplomatic negotiations were essential factors in the health sector in policy decision making.

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I. INTRODUCTION

Theories already being applied in the political sciences are not always well adapted to the multi-faceted character of the policy process (John 2003, 483). Political scientists have been trying to develop theories to better comprehend the policy process. A popular stage model takes policy making as stages that proceed step-by-step from issue emergence, through agenda setting, implementation, evaluation, and feedback. The stages model focuses on the process before and after the decision-making, rather than just arguing the decision-making process (REPHRASE). However, the policy process does not always follow defined stages (Birkland 2005, 224). Furthermore, the policy process is influenced by various exogenous factors such as changing social economic conditions. Analysis of the policy process should include observations of the political institutions and socio-cultural values that frame policy making within the policy subsystems.

The Advocacy Coalition Framework (ACF) developed by Paul A. Sabatier could be effective in exploring policy decision processes within a subsystem. The subsystem includes: politicians, bureaucrats, interest groups, researchers, and journalists -- actors who affect policy making. This paper examines the policy process of the Japan-Philippines Economic Partnership Agreement (JPEPA) on the issue of accepting nurses and caregivers into Japan using ACF as an analytical framework. Data from this study was derived from interviews with bureaucrats, newspaper articles, and government documents.

II. THEORETICAL FRAMEWORK OF THE ADVOCACY COALITION FRAMEWORK

The two-level-games approach by Robert Putnam focuses on the inter-relationship between domestic politics and foreign policy. It recognises that domestic policies can be used to affect the outcomes of international bargaining, and that international initiatives may be solely aimed at achieving domestic goals (Putnam 1993). In the relevant case study of the U.S.-Japan Negotiations on Construction and Semiconductors, Ellis S. Krauss examines the complex interweaving of domestic and international levels of politics (Krauss 1993). However, the theory of the two-level-games is inadequate to study the domestic factor that affect the policy outcome of the international negotiations. In order to examine policy decision processes, a theory to analyse the decision-making process of domestic factors is necessary. The ACF could be effective for analysing the domestic policy process which affects the policy outcomes of international negotiations.

The ACF deals with political issues involving different goal conflicts, important tech-

nical disputes, and multiple actors from several levels of government¹. The ACF sees a policy subsystem as a useful unit of analysis for understanding policy change. A subsystem consists of those actors from a variety of public and private organisations who are actively concerned with a policy problem or issue. Within the subsystem, the ACF argues that our conception of policy subsystems should be broadened from traditional notions of 'iron triangle,' -- lawmakers, bureaucracies and interest parties. How players in the subsystem influence the policy process differs according to different sectors and issues.

Policy decision-making is not done by rational decision-making of politicians and bureaucrats². However, the formulation of beliefs by the influences of policy professionals affects policy decision-making in the subsystems as well (REPRASE). The study of the ACF is significant in that it focuses on the influences of bureaucrats and policy professionals, coalitions of stakeholders, external variables that affect policy decision-making.

Figure 1 presents an overview of the role of advocacy coalitions within a policy subsystem. It also illustrates the effects of two sets of factors exogenous to the subsystem that affect the constraints and opportunities of the subsystem actors over time. The ACF provides a summary of the possible impact of coalition opportunity structures on the overall conceptual framework. The major impact is through the translation of relatively stable parameters into more specific constraints and resources affecting policymaking in the long run. In this framework, exogenous factors are divided into two categories; relatively stable parameters and external events.

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- 1 John W. Kingdon contributed to the study of agenda setting in the field that focused on the decision-making process. It argues that issues gain agenda status, and alternative solutions are selected, when elements of three streams including problems, policy, and political streams come together to meet windows of opportunity (Kingdon 1984). Sabatier argues that Kingdon is putting too much distance between the policy and political streams and the framework could be expanded to include the entire policy process by giving more attention to bureaucracies (Sabatier 1991, 151).
 - 2 With the case of the Cuban Crisis, Graham Allison argued the rational actor model that people make decision rationally based on the best information available in policy decision-making. In addition to the rational actor model, Allison raised new theoretical models: the organisational process and bureaucratic politics. The organisational process model analyses governmental action as organisational output and it argues that the policy output is based upon standard operating procedures. The bureaucratic politics is the product of competition and negotiation among the state leader, top government executives, bureaucrats, legislators and other interest parties. Government behaviours in this model is the bargaining along regularised circuits among players positioned hierarchically within the government games (Allison, 1971).

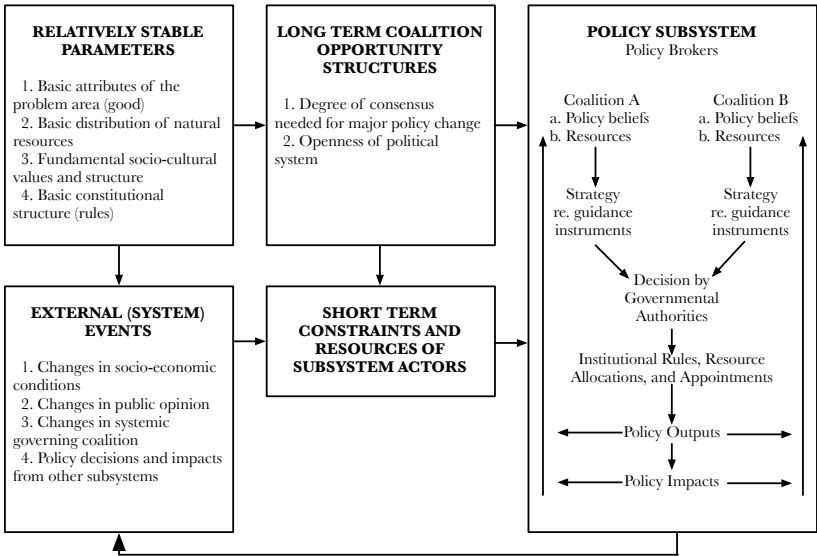


Figure 1: Diagram of the Advocacy Coalition Framework. Source: Sabatier 2007, 202

In the policy subsystem, this model emphasises two factors: 1) the roles of policy beliefs, to see how changing ideas will affect policy changes; and 2) the two dominant existing political coalitions, which have different policy beliefs.

Conflicting policy beliefs cause difficulties for policy decision-making. The two coalitions will accomplish a policy-oriented learning process through exchange of ideas, and the final agreement in the subsystem will greatly influence policy decisions of a country (Sabatier 1998, 2007).

III. APPLICABILITY OF THE ACF FOR INTERNATIONAL COMPARISON OF POLICY PROCESSES

Osamu Koike applied the ACF model to confirm the role of bureaucrats in the policy decision process regarding the issue of foreign workers in Japan. In his paper, he stated that, within this framework, differences in institutional correlation between domestic policy and the international political regime can also be examined in policy decision-making, and it would be interesting to apply the ACF to international comparison of policy processes (Koike 1996, 18). However, while there have been more than 100 publications on ACF by researchers from around the world (Sabatier 2007, 207), such international comparison has not been made. To study the dynamics of policy decision in a

globalised world, it is not enough to focus on policy subsystem in a country. Therefore, in this study, the concept will be applied to enable a comparison between the government of Japan and the Philippines in regard to the negotiation process of the JPEPA. It will explore the applicability of interaction between the two states in global governance for setting an international treaty for the JPEPA.

A. Background of Japan's Foreign Policy through Economic Partnership Agreements (EPAs)

Amidst the advancement of economic globalisation, the government of Japan aims to strengthen partnerships in areas not covered by the World Trade Organisation (WTO), and achieve liberalisation beyond levels attainable under the WTO by EPAs. Japan aims to take advantage of the geographical and cultural characteristics of counterpart countries, especially regarding movement of natural persons, as EPAs are the exception to the most favoured nation principle of General Agreement on Trade in Services (GATS) (Sugawara 2007, 11).

In addition, Japan expected bilateral EPAs to be stepping stones for more comprehensive EPAs with ASEAN and towards establishing an East Asian community. The agreements were expected to create an international environment that will be beneficial to Japan from a political and diplomatic viewpoint. According to the Japanese Ministry of Foreign Affairs (MOFA), pressure for deregulation and liberalisation from counterpart countries is an inevitable agenda to be dealt with as EPAs are conducted via reciprocal negotiations; Japan saw the necessity to connect EPAs by overcoming political sensitivity to increase its international competitiveness (MOFA 2003). While expecting economic benefit, Japan was aiming at utilising EPAs as political devices for promoting economic benefit of developing countries (MOFA 2002).

When Japan first signed an EPA with Singapore in 2002, it declared that Tokyo was ready to negotiate with any ASEAN countries to conclude EPAs in order to achieve its goal to reinforce its position within the international community such as WTO negotiations, through partnership and cooperation with related countries and regions. The Philippines was the first country to participate in this program.

B. Application of the ACF in Japan

In this section, the ACF is applied to the policy subsystem of Japan. First, effects on the policy subsystem from relatively stable parameters and external events are examined. Relatively stable parameters are the factors that affect long-term policy decision-making (Table 1). These parameters are the factors that affect the formulation of overall long-term policy regarding foreign labourers.

Regarding basic distribution of natural resources, shortage of nurses and caregivers is

an emerging issue because of the decreasing working generation, facilitated by the ageing society and low birthrate³. According to “the sixth supply and demand prospect of nurses” in 2005 by the Ministry of Health, Labor and Welfare (MHLW), in relation to a demand for 1,406,400 nurses, there was only an expected supply of 1,390,500, or a personnel shortage of 15,900 in 2010 (MHLW 2005). In reality, the shortage of nurses in remote areas is already serious, not only because of low allowance but because of unfavourable working conditions including long working hours and excessive work (Okaya 2005, 26).

Table 1: Relatively Stable Parameters in Japan

RELATIVELY STABLE PARAMETERS	
1. Basic attributes of the problem area (good)	Rather homogeneous country
2. Basic distribution of natural resources	Shortage in nurses and caregivers High turnover
3. Fundamental socio-cultural values and Social structure	Family care to socialization of care
4. Basic constitutional structure (rules)	Separation of Powers

Research into the actual conditions of caregivers in 2004 shows that 266 out of 1,016 facilities claim that caregivers at work are in shortage (CWF 2004). Turnover of caregivers was 21.6% more than double the 10% rate of ordinary companies (CWF 2007).

Fundamental socio-cultural values and social structure of Japan is in its transformation of old and new values. Old values rely on the government policy after the Second World War to promote housewives who stay at home to engage in reproductive labor. The government policy of tax exemption for housewives facilitated wives of employed workers for taking care of the family (Miyamoto 2008, 110). The function of family to support one another became fragile and unstable and socialisation of nursing care became the need of society.

Japan is a state of parliamentary democracy which adheres to the separation of powers between the three branches of government: legislative, administrative and judicial.

3 People aged 65 or elder accounted for 23.1% in 2010, which is expected to increase to 39.6% in 2050 (National Institute of Population and Social Security Research [NIPSSR] 2010).

The state is regarded as rather a homogenous country with a limited ethnic diversity⁴. Foreign residents in Japan comprise only 1.74% of the total population; among them, Filipinos being the fourth largest group, accounting for 9.5% (MOJ 2009a)⁵. In the Constitution of Japan, fundamental human rights are a privilege of its nationals. Social rights of foreign residents are now considered as being secured in the Constitution, however, voting rights are not given to foreign residents.

External events are factors that more directly affect policy decision of welcoming the candidates rather than the relatively stable parameter (Table 2). In Japan, the government introduced the Nursing Care Insurance System in 2000. Behind the establishment of this system whereby society supports the elderly, there was a strategy by the government to curb the expanding medical costs for prolonged hospitalisation. Under the system, the government opened the nursing care industry to a quasi-market, which is market-oriented service by non-profit organisations and the private sector.

In 2002, the Koizumi government introduced a structural adjustment reform by adopting New Public Management⁶ to enhance small government. To achieve this, annual social security spending was cut by 220 billion yen and payment for nurses and caregivers decreased along with this reform. Another external system event change was the Asian economic crisis of 1997. Japan had a long history of strict immigration control by the Ministry of Justice (MOJ) and the door was not opened until the late 1990s. The Economic Recovery Mission to Asian Countries Report in 1999 supported Asian nations which were strongly affected by the currency crisis. This report suggested, besides economic assistance for developing countries, the promotion of accepting foreign nurses and caregivers in order to deal with the declining birthrate, ageing population and globalisation, and Japan's economy and society. During the visit of the Recovery Mission, Hiroshi Okuda, the top representative of the Japan Business Federation (JBF), met with President Joseph Estrada and ministers including those from the Department of Labor and Employment (DOLE) in the Philippines. This report stated the necessity to consider accepting an intelligent Filipino workforce into Japan, and the expectations of the Estrada administration that Japan will further open its labor markets, which would boost the Philippine domestic economy by remittances from Overseas Filipino Workers (OFW)

4 The total number of foreign residents in Japan is 2,217,426 out of the total population of 127,767,994 in 2009. There is a discussion regarding the homogenous character of ethnicity as Japan obtains many minority issues including Japanese with Korean and Chinese ancestors, class-oriented discrimination and the Ainu.

5 Entertainer visa was one of the reasons for increasing numbers of Filipinos staying in Japan as many of them married Japanese men and changed their visa into spouse status after having worked in Japan (Ballescas 1992).

6 The term New Public Management was first referred by Christopher Hood in his paper titled "A New Public Management for All Seasons," in *Public Administration* in 1991 in England.

(MOFA 1999). This is the first time that the government of Japan indicated its acceptance of foreign nurses and caregivers in its official documents.

The Koizumi administration conducted neoliberal reform with the backing of the business world by advocating the “Promotion of EPAs with ASEAN nations” for the prosperity and the national security of Japan. This forced the MHLW, which had maintained a closed policy toward foreign workers, to make a decision for policy change.

Public opinion is another external system event that affects policy decision. According to a public poll in 2000 by the Cabinet Office, 17% of respondents would not accept foreign workers into the nursing industry and a further 31.3% would rather not accept them. Reasons not to accept them included the necessity to communicate in Japanese (69.5%); the necessity to understand institutions and customs in Japan (58.0%); and the necessity to acquire technical knowledge and skills (38.3%). Eighteen point three percent responded that “if foreign workers are being accepted, employment opportunity for Japanese will be deprived (Cabinet Office 2000).

Table 2: External Events in Japan

External (System) Events
1. Changes in Socio-economic Condition The Asian Economic Crisis in 1997
2. Changes in Public opinion Increasing demand for nurses and caregivers
3. Changes in Systematic Governing Coalition The Koizumi administration was in charge
4. Policy decisions and impacts from other Subsystems Policy subsystem of the Arroyo administration

The JPEPA negotiations were held under the Liberal Democratic Party’s Koizumi government after Prime Minister Junichiro Koizumi declared that Japan would start negotiating with any country in ASEAN for EPAs. The strong interest of the Arroyo administration created pressure for the government of Japan to consider opening the labor market for Filipino health professionals beginning with a study group before entering into formal negotiations of the JPEPA in 2003 (MOFA 2003). As this situation illustrates policy decision and impacts from other subsystems are the external events that affect the decision-making process of policy subsystem.

The struggles in the policy subsystem in Japan reveal the real players of policy decision in this policy process (Figure 2).

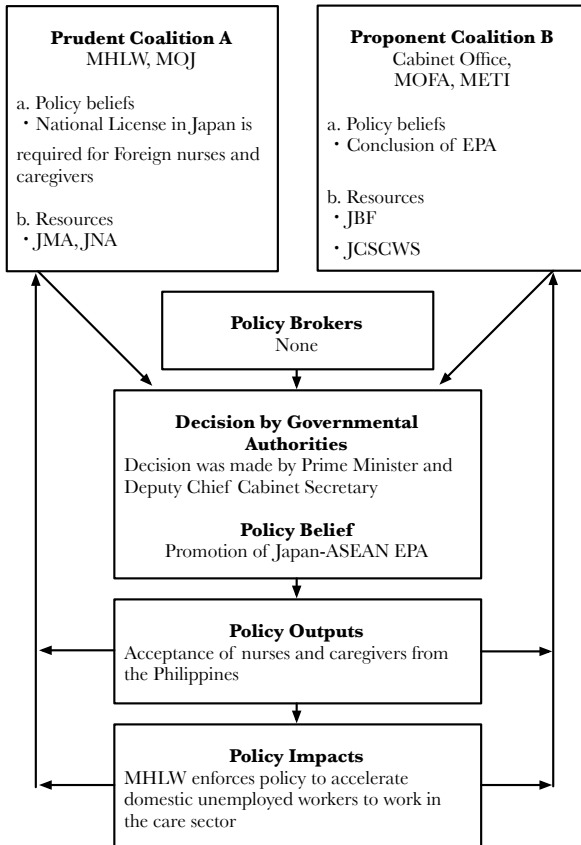
POLICY SUBSYSTEM

Figure 2: Policy Subsystem of Japan

Coalition A is a coalition of ministries which are cautious about accepting Filipino nurses and caregivers; these ministries are the MHLW and the MOJ. MHLW policy puts the highest priority on maintaining a domestic supply and demand market for Japanese workers. In the MHLW, ministry officials started discussing acceptance of foreign workers based on labor market test, by setting the cap and by acceptance through agreement from 2002 (MHLW 2002). Furthermore, the Japan Medical Association (JMA) and the Japan Nursing Association (JNA) are prudent groups which are reluctant to accept foreign nurses for fear that the quality of services and medical standards will deteriorate. Coalition B is a coalition of the cabinet office, the Ministry of Economy, Trade and Industry

(METI) and the MOFA, which advocates acceptance. The intent of this coalition was to conclude the JPEPA for the economic benefit of Japan. Advocates of this coalition were the Japan Business Federation (JBF) and the National Aged Welfare Facilities Association (NAWFA), which promoted welcoming foreign nurses and caregivers to work in welfare facilities (NAWFA 2008).

C. Application of the ACF in the Philippines

In this section, the policy decision process will be observed from the point of view of the Philippines. Relatively stable parameters affect the comprehensive international labor migration policy of the Philippines (Table 3).

The Philippines has a wide range of ethnic diversity and a long historical background of international labor migration going back to the eras of Spanish and American occupations. After the devolution of the health sector in 1991, many local governments find it difficult to hire health professionals including nurses, who are in great demand in foreign markets. Brain drain of skilled nurses is serious because of the inability of local governments to afford appropriate personnel expenses due to their limited budgets (Lieberman et al. 2005, 167). In the global economy, families are dependent on each other for care across national borders, formulating a “global care network” (Ballescás 2009, 128).

Jaime Galvez-Tan, a former Health Minister and professor at the University of the Philippines, warns that this situation is no longer brain drain but brain haemorrhage. (Galvez-Tan 2005: 2). It is difficult to solve these issues without government intervention⁷.

7 Dr. Jaime Galvez-Tan claimed that it is necessary to establish a policy network in order to reach an ethical and responsible agreement that will create a win-win situation between the sending countries and accepting countries regarding the situation of the mass brain haemorrhage of Filipino medical professionals to overseas. (Speech. International Symposium of Education for Sustainable Development.)

Table 3: Relatively Stable Parameters in the Philippines

RELATIVELY STABLE PARAMETERS
1. Basic attributes of the problem area (good) Feminization of international labor migration
2. Basic distribution of natural resources High education level and literacy rate Skilled nurses and trained caregivers
3. Fundamental socio-cultural values and social structure Promotion of professional OFWs Family-oriented care based on Catholic culture
4. Basic constitutional structure (rules) Presidential system Separation of powers

In addition, strong family ties based on Catholic culture play a complementary role in supporting the welfare of the family (Sato 1997, 878). The Japanese government started strict immigration control for entertainer visas from the Philippines in 2005. This influenced the Arroyo administration as an external event for promoting the movement of nurses and caregivers through the JPEPA (Table 4). In June 2004, the report on human trafficking by the U.S. State Department announced that measures of the Government of Japan to counter human trafficking were not enough, and the situation should be continually monitored⁸. As a consequence, the government of the Philippines sought an alternative route for Filipinos to work in Japan through official government channels.

Table 4: External Events in the Philippines

External (System) Events
1. Changes in Socio-economic Condition Strict VISA for entertainers to Japan in 2005
2. Changes in Public Opinion Promotion of government-route OFWs
3. Changes in Systematic Governing Coalition The Arroyo administration was in charge
4. Policy decisions and impacts from other Subsystems Pressure from the government of Japan

8 Because of the control, the number of work permits for entertainers decreased from 82,741 in 2004; to 47,765 in 2005; and to 8,608 in 2006(MOJ 2009b).

POLICY SUBSYSTEM

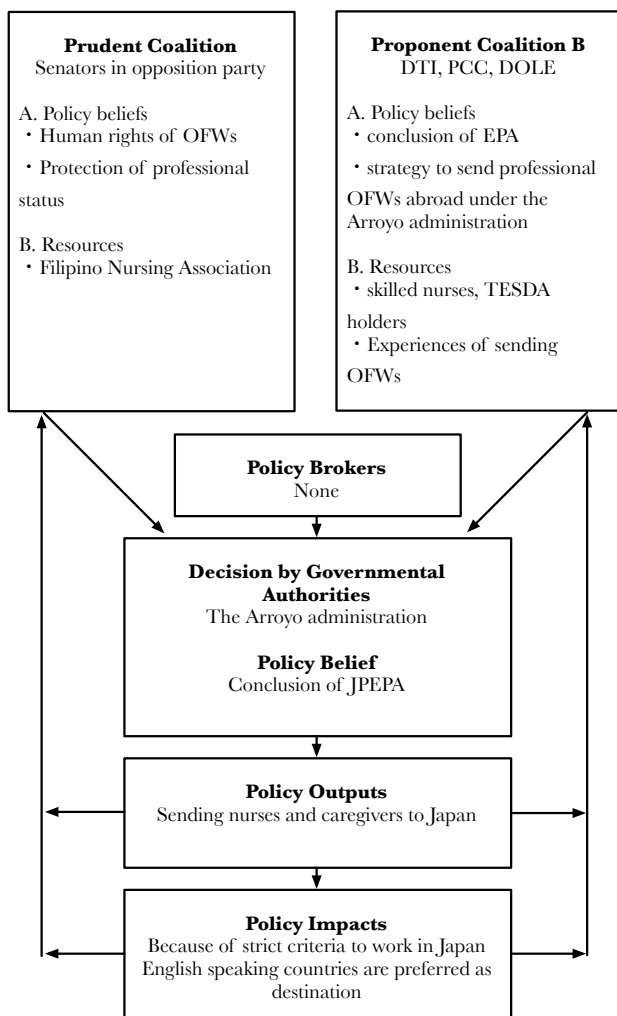


Figure 3: Policy Subsystem of the Philippines

Figure 3 shows the ACF in the Philippines. With regards to the struggles of the policy subsystem, there was friction between two coalitions in the Philippines, especially when the Senate was in the process of ratifying the JPEPA. A prudent coalition of parliament members in the Senate against the Arroyo administration focused on human rights for OFWs. This coalition had support from the Philippine Nursing Association (PNA) which vigorously opposed the JPEPA requirement that Filipino nurses and caregivers should undergo training in the Japanese language and should take the licensure test in that language (Senate Press Release, April 17, 2008). Another coalition consisting of the Department of Trade and Industry (DTI) and the Department of Labor and Employment (DOLE) supports sending nurses and caregivers. This group promotes the dispatch of professional nurses and trained caregivers as resources of the Philippines. As required by the Constitution, two-thirds of the total members of the Senate should concur with a treaty before it is ratified and becomes effective. In January 2008, President Arroyo urged the treaty-ratifying Senate to immediately approve the JPEPA (Inquirer. net January 19, 2008). The Senate, by a vote of 16-4, ratified the controversial JPEPA on October 10, 2008⁹ and the Arroyo administration succeeded in ratifying the JPEPA.

It is hard to determine how each senator came to his or her individual decision, while a Diet member in Japan pointed out that the opposition parties against the Arroyo Administration in the Senate were politically using the toxic waste issues, incorporating domestic factors into the foreign policy issues¹⁰. Furthermore, the Japanese press reported that opposition parties were using the JPEPA issues for political games (Asahi Shinbun Morning 3, October 5, 2007).

According to an interview with a staff member of Senator Miriam Defensor-Santiago, the senator, who chaired the foreign relations committee, positively evaluated that through the JPEPA, professional Filipino nurses and skilled caregivers would be more acknowledged and become the target of protection through law enforcement. She added that the opening of the door would bring in the benefit of nurses in the near future¹¹.

The then Senator Benigno Aquino III, who opposed ratifying the JPEPA, later won the presidential election in May 2010. He voted against the JPEPA because the treaty is one-sided, benefiting Japan more than it would benefit the Philippines, and wanted a renegotiation of the treaty which is much more advantageous and beneficial to the Filipino

9 Those who voted "yes" were Miriam Santiago, Edgardo Angara, Rodolfo Biazon, Alan Peter Cayetano, Jinggoy Estrada, Juan Ponce Enrile, Gregorio Honasan, Panfilo Lacson, Loren Legarda, Ramon Revilla Jr, Manuel Roxas II, Juan Miguel Zubiri, Manny Villar Jr. Francis Pangilinan, Ricahrd Gordon and Lito Lapid. Those opposed to the ratification were Aquilino Pimentel Jr., Jamby Madrigal, Francis Escudero, and Benigno Aquino III. There was no abstention.

10 This statement was made by Kazuya Shimba in the democratic party of Japan in the Standing Committee of Foreign Affairs and Defence on December 5th, 2006.

11 The interview was held at the office of Santiago in the Senator on January 27, 2009.

people (Senate of the Philippines October, 18, 2008).

IV. NEGOTIATION PROCESS AND INTERNATIONAL COMPARISON OF THE FRAMEWORK

Between Japan and the Philippines, official negotiation for concluding the JPEPA was held five times from February to November in 2004, until both parties reached agreement in principle. The Diet of Japan ratified it on December 6, 2006, which was a prerequisite for the treaty to be effective, while it took two years for the Senate in the Philippines to ratify.

Just before the official negotiation, a newspaper in Japan reported that Manila wanted Tokyo to allow more Filipino professionals, especially nurses and other health workers, to work in Japan; it was also hoping to increase tropical fruit exports to Japan. However, Japan was reluctant to accept medical workers from the Philippines out of fear that they would take jobs away from the Japanese people or trigger a decline in pay rates, while wanting the Philippines to lower tariffs on industrial products to liberalise investment and service sectors, and to improve the overall business environment (Japan Times Feb.5, 2004).

At the official negotiation, the chief negotiator of Japan was Ichiro Fujisaki, a Foreign Ministry Official while his counterpart was a Senior Undersecretary of the DTI, Thomas G. Aquino (Fujisaki 2005). From the MHLW, which is in charge of labor policy, a councillor of minister's Secretariat of the International Affairs Division, Takashi Minagawa, attended two out of five official meetings (METI 2004). According to a high-ranking official from the MOFA, overall negotiation was handled by the two chief negotiators of both parties after they had first coordinated the negotiations at small technical meetings of each sector¹². The negotiations focused on economic benefits for both countries; both parties failed to foresee overall effects of the labor market in both countries during the negotiation process.

At the second meeting of the official negotiations¹³, Japan explained the current licensing system and the visa status of health professionals and caregivers in Japan (METI 2004). In 2004 at the time of the negotiations, strict immigration control allowed nurses of foreign nationalities a maximum four-year stay as a training period¹⁴. It was possible for foreigners to obtain the national license for caregivers in Japan; however, they would never be able to work in Japan as there was no relevant visa status.

12 An interview was held with a high-ranking official of the MOFA at the office of the MOFA on October 30th, 2009.

13 The second meeting was held from April 14th to April 16th in Tokyo (Fujisaki 2005).

14 Later in 2006, the law was revised and now foreign nurses are eligible to work for training purposes for seven years after acquiring the licenses.

In the third negotiation¹⁵, the official from the MHLW succeeded in persuading negotiators from the Philippines to concentrate on nurses and caregivers by respecting the current licensing in Japan (Fujisaki 2005, 89). The MHLW had a plan to select licensed nurses and caregivers who were fluent in Japanese; nurses who completed training at medical facilities in Japan and acquired professional licenses would then be eligible for visas renewable for longer than the four years permitted to foreign nurses. The Philippines accepted these conditions except the provision requiring Japanese proficiency; the negotiation shifted to conditions regarding quotas and who would cover the cost of training (Nihon Keizei Shinbun July 1st 2004 Morning 1). Although the MHLW was reluctant, the METI agreed to accept nurses and caregivers, offering six-month post-arrival Japanese training sessions, financed by the ODA budget of the METI, to be in favour of the government of the Philippines in the negotiating process¹⁶. In consequence, Tokyo agreed to accept nursing and caregiver candidates as a trade-off for concluding the JPEPA for gaining benefits of other trade items on the negotiation table, such as iron and steel as well as automobile parts¹⁷. The JPEPA was approved at the Upper House plenary session in Japan by a vote of 212-9 on December 6, 2006.

In the Japanese government subsystem, officials from the MHLW had to compromise in the national interest of Japan to conclude the JPEPA, as the power of the METI, supported by the business world, was stronger. The MOFA bureaucrats controlled the overall negotiation and the final decision was made by the then Deputy Chief Cabinet Secretary¹⁸. The framework showed the bureaucratic policy decision process of the Japanese government and there was no policy space for policy brokers to intervene. On the other hand, in case of the Philippines, disclosed documents would indicate that bureaucrats were united in support of the Arroyo administration's acceleration of professional migration. On the other hand, conflict among policymakers was apparent in the process of ratification. Only four senators remained in opposition as there was not a strong tie in the coalition between opposed senators and related interested parties.

Many issues were raised by the Japanese government because of policy output which lacked deep consideration for establishing policy core beliefs in the subsystem. One of

15 The second meeting was held from July 5th to 7th at the Cebu Island in the Philippines (Fujisaki 2005).

16 See note 10.

17 The conditions of Filipino nurses and caregiver candidates coming to Japan were set as follows. The Japanese side will allow entry of Filipino qualified nurses and certified caregivers that satisfy certain requirements and will allow them to work, after completing training in the Japanese language and other skills, as preparation for obtaining national licenses. Duration of stay is up to 3 years for nurses, 4 years for certified caregivers. After taking the national license examinations, successful candidates will be allowed to work as qualified nurses and certified caregivers in Japan.

18 See note 10.

the problems was a poor result in the Japanese National Nursing Examination in March 2010, in which the total average passing rate is 89.5%. Though Filipino nurses had high professional competence and skills, difficulties with Japanese language caused the poor performance of Filipino licensed nurses. Of the 59 Filipino nurse candidates on the JPEPA program, only one candidate passed the exam.

In this case, no policy-oriented learning had been held in either country. Policy output was the result of compromise between both countries. The JPEPA scheme is a result of micro level trade negotiation and is not linked to the long-term social policy of either country for distributing nurses and caregivers.

V. CONCLUSION

The application of the ACF shows that bureaucrats in Japan took initiative in the policy process, while politicians were dominant in the subsystem of the Philippines. The Japanese negotiating team had more controlled negotiating power as bureaucrats were strategic, while bureaucrats in the Philippines were not used to negotiating bilateral EPAs. The ACF identifies that relatively stable parameter of institutional differences prevent both governments from changing long-term migration policy. Furthermore, the framework could be enhanced to incorporate policy brokers between the two countries in order to examine possible third party intervention into the bilateral negotiations... The framework offers a limited view of informal aspects of negotiation including players of private sectors who affected the negotiation results.

The difference between the policy network of health sectors in Japan and the Philippines and the influence of the health sector policy community¹⁹ during the diplomatic negotiations affected the policy outcome. For ethical and responsible agreement on the movement of people, international cooperation of the policy community is indispensable. However, the Department of Health in the Philippines and multiple-stakeholders of health professionals in the Philippines were not involved in the bilateral negotiation with bureaucrats. This resulted in the compromised policy outcome.

It is difficult to change the core policy belief of the MHLW, which is guided by relatively stable parameters regarding the issue of opening the labor market to foreigners. Bureaucrats of the MHLW consider the EPA scheme as an exceptional measure and have no intention of linking this scheme to long-term labor policy. The Japanese government is

19 "Policy community" designates those organisations and individuals in and around government who specialise in a particular policy area. The main, regular members in pluralist systems are bureaucrats and their agencies, individual political and their groupings, organised interest groups and their leaders and staff; and "experts" inside government, universities, or other institutions who research and think about policy (Campbell et al 1989).

now leaning towards enhancing employment among the younger generation, women and the elderly to support the greying society, as is mentioned in the latest growth strategy approved by the Cabinet in June 2010 (Cabinet Office 2010). On the other hand, the new Secretary of the Department of Health in the Philippines is now aiming at fighting against the brain drain of doctors and nurses from the Philippines. It is beneficial to continue bilateral dialogue leading up to the renegotiation of the JPEPA in 2011, in order to improve the situation for both countries.

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NGO AND SUSTAINABILITY: INTEGRATING BUSINESS AND AID

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ABSTRACT

People still think making profit is solely in the business territory, and not for NGOs. But in reality, NGOs also need money to sustain their organization and implement their mission. Ongoing NGO fundraising rely almost exclusively on project-based funding. NGOs struggle to pay the overhead costs that donors are reluctant to pay. This paper illustrates a case study on a South NGO in Thailand dealing with Burmese irregular migrant issues; it will show the issues based on financial analysis and reveals possible implications. This paper suggests that there maybe a potential NGO business that integrates business and aid.

I. INTRODUCTION

This paper examines a case study of a non-governmental organisation (NGO) in Thailand regarding funding issues such as project-based funding, overhead costs, and self-generated income to analyse the sustainability of the NGO.

The funding issue, which is shared as a "common dilemma (Viravaidya and Hayssen 2010, 1)" became a serious threat to many NGOs from 2008 to 2009. A number of NGOs reported "substantial reductions in their funding in the wake of the global financial and economic crisis" (Hanfstengl 2010, 3). A survey¹ supported by the United Nations (UN), responded by 640 NGOs from 107 countries found that 68 percent in 2008 and 74 per cent in 2009 reported their budget decrease or zero increase. "The World Economic Situation and Prospects 2009" report of the UN estimated that "125 million people in developing countries were already driven into extreme poverty (UN 2009,VI).

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1 The survey was conducted by Hanfstengl with the support of UN Secretariat.

The survey also found that NGOs that “rely relatively heavily on corporate giving and private foundations” have suffered the most as these donors were directly impacted by the crisis. The common dilemma became an immediate agenda to many NGOs when their ability to raise funds declined during a crisis while the cost of operation increased (Hanfstaengl 2010, 16). Consequently, NGOs were helpless without money for their budget.

II. FUNDING ISSUES

A. Project-based Funding

Many NGOs rely on project-based funding because they cannot raise funds from the public. If NGOs were able to raise funds from the public, they might prefer not to take so many projects that consume so much of their time to prepare documents and reports; this may give NGOs a bad reputation of being in a “‘client’ relationship” (Habib and Taylor 2001, 224). The issue on project-based funding system is not a new agenda, and scholars pointed out mainly two issues:

- 1) Donor's reluctance to fund overhead costs
- 2) Donor's agenda rather than local agenda

The Centre for Civil Society² at the London School of Economics (LSE) has more than 20 years of history studying civil society. David Lewis³, a professor of social policy and development in LSE emphasised the “importance of the structural context” that is “created by donor policies and practices” with NGO organisational performance (2006, 674). In his book “The Management of Non-Governmental Development Organisations,” he noted Carroll's⁴ position that the donor's reluctance to pay overhead costs related to the projects due was to its unpopularity back in the donor's home country (quoted in Lewis 2007, 77). Many donors from individual to the government want their money to be directly spent on the agenda instead of being spent on the salary of NGO staff or rent.

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- 2 The Center for Civil Society will be closed on 30 September 2010.
<http://www.lse.ac.uk/collections/CCS/research/default.htm> (accessed 20 August 2010)
 - 3 <http://www2.lse.ac.uk/researchAndExpertise/Experts/d.lewis@lse.ac.uk> (accessed 20 August 2010)
 - 4 Carroll, T.F. 1992. *Intermediary NGOs: The Supporting Link in Grassroots Development*, Hartford, CT: Kumarian Press.

Grant B. Stillman⁵, legal adviser of the Asian Development Bank (ADB) Institute, also pointed out the root cause of NGO funding problem is the tradition of reluctance to fund overhead or administration costs. He gives the example that the Department for International Development of the United Kingdom (UK) limited its fund receiver to spend less than 8 percent on administration costs. Donors may welcome the figure of such low ratio, but high overheads are unavoidable for some NGOs who engage in research, advocacy, emergency care, community building and so on (Stillman 2007, 52). This attitude leads many NGOs to struggle when generating money to cover their overhead costs. The merit for donors and the demerit for recipients are the two sides of the same coin. Donors like the project-based funding system since they can easily control the budget to avoid the overhead costs and restrict certain agendas which donors do not favour. Accordingly, the system has compelled many NGOs to “follow the money” by meeting up donors’ agenda, to find a way to “contribute” to the overhead costs on their own, and to live a project-to-project existence (Viravaidya and Hayssen 2010, 1-2).

B. Overhead Cost

The issue of overhead cost is not limited to project-based funding. Every donor is interested in the overhead cost. From the accounting point of view, any cost can be basically divided into direct costs and indirect costs; overhead cost is indirect costs (CSO Network Japan 2005, 1-2, 56)⁶. According to “CIRCULAR NO. A-122 Revised May 10, 2004” issued by the Office of Management and Budget (OMB) of the U.S. government, all federal agencies have to follow these principles to determine each cost of non-profit organisations; “Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective,” while “direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular award, project, service, or other direct activity of an organisation (OMB 2004)”⁷. So the issue of overhead cost is about indirect cost.

The “Nonprofit Overhead Cost Project” had been conducted from 1999 to 2004 by collaboration between the Center on Philanthropy at Indiana University and the Center

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- 5 Dr. Stillman has been ADVI’s (Asia Development Bank Institute) legal adviser since the Institute’s beginning.
<http://www.adbi.org/viewcontact.php?contactid=207§ionID=49> (accessed 20 August 2010).
 - 6 http://www.mofa.go.jp/mofaj/gaiko/oda/shimin/oda_ngo/shien/pdfs/kansetsuhi.pdf (accessed April 30, 2010).
 - 7 http://www.whitehouse.gov/omb/circulars_a122_2004/ (accessed 20 August 2010).

on Nonprofits and Philanthropy at the Urban Institute.⁸ The project was intended to “understand how nonprofits raise, spend, measure, and report funds for fundraising and administration, and to work with practitioners, policymakers, and the accounting profession to improve standards and practice in these areas.” The overall study had three phases: 1) analysis of more than 250,000 Internal Revenue Service (IRS) Form 1990s⁹; 2) in-depth case studies of nine organisations; and 3) 1,500 responses to a 2002 survey of the US nonprofits.

One of the working groups of the project lead by Hager, Pollark and Rooney gives some indicators of overhead ratio introducing several studies. Doble’s report in 1990 based on focus group research mentioned that 75 percent of “the contributions should be spent on programs” while those research participants doubted only 50 percent or less was spent for the programs. According to Stehle’s report in 1998 based on a research by the Hudson Institute on the attitude of Americans toward public charities, almost 50 per cent cared how much of their potential contributions will be spent for administration and fundraising. The American Institute of Philanthropy (AIP) noted that 60 per cent or more to be spent on programs would be reasonable. Accordingly, AIP noted that “\$35 or less to raise \$100 is reasonable for most charities.” Hager et al. noted as a result of the study on NGOs’ organisational side; 1) as age increase, the overhead ratio decreases; 2) sub-sectors have different average overhead cost ratios; and 3) subsectors have different average fundraising efficiency ratios¹⁰. Furthermore, age does not matter to the overhead costs and fundraising efficiency ratio nor the size, age and subsector can explain variation in the overhead cost and fundraising efficiency ratio. Their study concluded with a caution “against uniform application of efficiency standard across all types of nonprofit organisations” since overhead ratio and the way of fundraising will vary by the size, age, subsector.

C. Self-generated Income

Self-generated income could be one of the three major funding sources for non-profit organisations (NPOs), and yet it brings ideological problems regarding making profit through their activities (Cariño 2001, 213). The 1996 comparative study on non-profit

8 The detailed information available at <http://www.costsutdy.org> (accessed 20 August 2010).

9 The analysis of such volume of data was possible because the data of uniformed financial statements, Form 990, submitted to IRA has been available on line (Wing et al. 2006, 2, 10).

10 According to the “Nonprofit Overhead Cost Project” (2004), the “fundraising efficiency ratio” is calculated dividing fundraising cost by the total raised contributions.

sectors in eight countries¹¹ by the Johns Hopkins Comparative Nonprofit Sector Project lead by Professor Salamon revealed that 47 percent of the non-profit income came from “service fees and sales,” 43 per cent from government, and only 10 percent from private philanthropic giving (Salamon 1996). Accordingly, to Salamon, although self-generated income such as “fees, proceeds from the sale of goods, membership dues, and investment income” are the crucial factor for sustainability, too much reliance on them can lead NPOs to sacrifice their “special character” which are “use of volunteers,” “social missions,” and “not-for-profit character.” He concluded that “meaningful level of self-generated income” may be crucial for their sustainability. Thus, not only because of the increasing market experience, but their operation for problem solving also required them to be efficient and effective which brings another issue of the “over-professionalisation” of NPOs (Payton 1987, 6, Salamon 2001, 24).

In fact, back in the 1990s, the organisation itself used to operate with the mentality of a “private preserve” rather than a set of “publicly responsible institutions” (Salamon 1996, 15). Both the public and NGOs still have mixed feelings toward the professionalisation of NGOs. Newsweek on 5 September 2005 wrote: “The \$1.6 trillion non-profit sector behaves (or misbehaves) more and more like big business” (Lewis 2007, 12). Some people still expect NGOs to work as charity. According to an article in the Japan Times on 18 September 2007: “One of the biggest challenges is in fighting the long-held belief that those who work in the non-profit sector should do so without compensation”¹² (Rossitto 2007).

Some people then might be surprised to learn some NGOs in Asia grew to integrate business and aid in recent years, and those NGOs are profitable, such as the Population Community Development Association (PDA) in Thailand, CARD Mutually Reinforcing Institutions (CARD MRI) and Philippine Business for Social Progress (PBSP) in Philippines, Friends-International in Cambodia, Bangladesh Rural Advancement Committee (BRAC) in Bangladesh and so on. Forbes.com¹³ reported on 26 March 2008: “Microfinance Meets Wall Street: BRAC’s microfinance program in Bangladesh serves over 7 million poor borrowers through its innovative credit ladder model. BRAC also operates a publicly traded, commercial bank that serves small and medium-size enterprises in Bangladesh and Afghanistan” (Davis, Susan and Rod Dubitsky 2008). Also, an Australian cuisine magazine introduced an incredible restaurant owned by an NGO as an amazing story:

11 Japan, Sweden, Hungary, Italy, US, UK, France, Germany.

12 Resilience’s Sachi Nakajima made the comment according to Japan Times. Rossitto, Sarajeon. 2007. In the Japan Times
<http://search.japantimes.co.jp/cgi-bin/fl20070918zg.html> (accessed 30 July, 2010).

13 Forbes.com.
http://www.forbes.com/2008/03/22/brac-microfinance-creditsuisse-oped-cx_sdrd_03_26brac.html (accessed January 30, 2010).

One of Friends International's latest enterprises is the restaurant Romdeng, located in Cambodia's capital city, Phnom Penh. Romdeng was established five years ago and its name means 'friends' in Khmer, the Cambodian language. The unusual thing about this eatery is that it's completely staffed by former street kids who do everything from designing the menus, preparing and cooking meals, waiting tables, and even painting the artwork featured on the walls and sewing the silk cushions for the chairs.

(Australian Appetite June 2010, Cambodian Cuisine¹⁴).

The aforementioned examples of NGOs in Asia did not engage in self-generated income for profit-making purposes but for their survival as well as for an effort to create an innovative way to integrate aid and business to be self-supporting. They cannot risk their sustainability to continue their operation, and that is why they are struggling on self-generating income. NGOs "can generate surpluses in the course of their operations, but any such surpluses must be reinvested in the objectives of the organisation" (Salamon, Sokolowski and List 2004, 9) so the surpluses will be "put back into the funding of the NGO's mission and programs" (Stillman 2007, 15).

The following case study shows a medium-sized South NGO struggling due to project-based funding. First, the background information will be introduced to illustrate the significance of the NGO, and FED's role in Thai society.

III. IRREGULAR BURMESE MIGRANTS IN THAILAND

Approximately 50 million migrants are living in the world today with illegal status out of the 200 million international migrants (UNDP 2009). In Thailand, approximately 1.8 million to 3 million migrants are irregular and between 70 to 80 percent of them originate from Burma (Human Rights Now 2010). Official figures by the Ministry of Labour statistics of Thailand is 1 million¹⁵ migrants including 0.8 million¹⁶ Burmese registered for legal status in 2009 (HRW 2010, 72). Because of their "illegal" status, many of them are invisible in Thai society¹⁷. Although they have no access to health care, education, labour rights, or human rights, those irregular migrants has been increasing because

14 Australian Appetite. 2010. Cambodian Cuisine. June 2010 issue. 72-3. Available at Friends International web site:

<http://www.friends-international.org/shop/restaurants.asp?mainmenu=shop&page=restaurants> (accessed January 30, 2010).

15 1,054,261

16 785,018

17 "Is there such a thing as an 'illegal' human being?" Questioned by the executive director of FED.

of cyclone “Nargis” in May 2008, repression of the minorities by the current military regime, economic crisis in Burma and also those born in Thailand. They cross the boarder risking their lives to survive because “per capita gross national product of Thailand is six times” as great as that of Burma and they can make only “less than 50 baht per day” in Burma (IOM 2005). Most of the migrant workers in Thailand engage in 3D jobs (difficult, dirty, and dangerous) yet they can make much more than 50 baht per day. Some examples from my interviews are as follows: a construction worker was earning 230 baht per day, and a rubber plantation worker was earning 500-600 baht per day but had no when it rains. Migration to Thailand has become an “economic survival strategy” for many of the rural families in neighbouring countries (Huguet 2007)

IV. CASE STUDY OF COMMUNITY-BASED NGO

Foundation for Education and Development (FED) was established in Thailand in 2000 with just a few staff including Ms. Popo¹⁸ who is now a deputy director of 82 staff, almost 90 percent of them are Burmese. FED moved to its current location, Phang Nga Province in South Thailand, immediately following the Tsunami in 2004. FED received many phone calls for emergency assistance from Burmese migrants in the Phuket area since they were afraid of going public to receive support due to their legal status though emergency support were provided by hundreds of International NGOs. Before the tsunami, there were no schools for Burmese children as they were just as invisible as their parents; FED established 3 unauthorised schools for 159 students aged from six to twelve years old with only 10 teachers in 2005. The number of students increased to 590 as well as the number of unauthorised schools to 10; furthermore, 2 nurseries with a total of 38 teachers were established in 2008. FED’s mission is “to promote education, human rights, and the development of a safe working environment for Burmese people in Thailand.” Accordingly, the FED’s three largest departments are: 1) Education with 36 staff and teachers which consists of 44 percent of the entire staff; 2) Community Health Care with 16 staff, 20 percent of the entire staffs; and 3) Migrant Development, Human Right and Legal Aid with 15 staff, 18 percent of the entire staff. Funding tendency, however, shows a gap between the donor’s agenda and the community needs. The project expen-

18 Collaborative research, an anthropological method, has been taken in this research for deeper understanding of NGO manager’s point of view. The researcher of this paper cooperated with Ms. Popo, deputy director of FED via direct interviews, discussions, and email exchanges before and after the field research as well as on site. Collaborative research is “neither purely academic nor purely applied, and have the potential to narrow the gap between academic and applied anthropologies” (Lassiter, 2008). So this new attempt may add more reality of the local NGO to academic research.

diture on education decreased from 53 percent in 2009 to project funding¹⁹ of 42 percent in 2010, health care also decreased from 17 to 14 percent, and migrant development increased drastically from 26 to 44 percent. Furthermore, since 30 percent of the grants in education in 2010 was restricted to buy land and build new learning , the actual funding ratio for education then was 29 percent instead of 42 percent of the entire funding in 2010. It is apparent that migrant development, human rights and legal aid are more popular agendas than education and health care in 2010 whether or not those are the most immediate agendas in the community.

During the interviews and discussions, FED's management, the Secretary-General Mr. Htoo Chit and Ms. Popo repeatedly expressed their anguish as to how to generate overhead costs. FED's overhead cost in 2009 was US\$241,451²⁰, 43 percent out of total expenditure of \$567,390. The breakdown of the overhead cost was 13 percent of administration and operational cost and 30 percent of staff and teacher salaries²¹. Defining what constitutes administration or overhead costs is always a problem (Stillman 2008), yet proper differentiation of administrative work and non-administrative work are unexceptionally required.

Community based South NGOs like FED need relatively higher overhead costs than North NGOs or other South NGOs focused on network, fundraising and so on. For example, FED currently has 5 learning centres, 4 mobile teaching centres, 2 nurseries, and 1 high school "youth outreach", a women's centre, emergency shelter, an office, and 36 teachers. These are unavoidable cost for regular operation of schools and projects. For example, the health care team has 16 staff and they definitely need more to cover their entire communities. FED's bi-annual report of 2007 to 2008 highlights their work as below:

Over the course of a month the health team will visit around 65 Burmese communities living in rubber plantations, construction sites and fishing communities across Phang Nga province. Each community has between 50-150 members. This means that at least 3,000 migrants have direct contact with (FED) staff on a regular monthly basis. ... Two senior medics have divided their duties and rotation between regular medical checkups at all the learning centres and nurseries. The school health care activities do not only include medical checkups but they also teach students about basic personal health care

19 As for the figures of the project Expenditure in 2009, expenditure for "Administration and Operational Cost" and "Staffs and Teacher Salaries" were divided by the staff % in the three main projects and added up to the organic figure of those three project expenditures. The purpose of which is to compare with the project-funding % in 2010. Although these numbers are not exact nor have same base, it is possible to see the approximate ratio.

20 Rate: 1Baht=US\$0.03

21 The 38 per cent of Education expenditure is also teachers' salary, but separated from the staffs and teachers salary as they double the both roles.

such as how to prevent infections from malaria, diarrhoea, dengue fever and other common maladies.

The Nonprofit Overhead Cost Project also suggests the steps to improve non-profit reporting. Some of the implications are useful for FED as well as many other NGOs. They recommend NGOs to: 1) “treat the allocation of expenses as an important audit issue”; and 2) “adopt staff timesheets and to use them for functional-cost allocation” so that they can “avoid the appearance of excessive overhead” (Wing et al. 2006). Although more attention is always paid to the overhead ratio, financial statements can tell a lot about the organisation. In FED’s case 5 major problems and suggestions can be easily identified from the 2009 figure: 1) 43 percent overhead cost looks too high; 2) 99 percent of the income is grants restricted to projects, which means no flexible money to pay overhead cost, to expand their activity, or to invest to generate extra money; 3) 65 percent of the income is provided by the major 5 donors, which means very low diversity that can lead to higher risk as even losing just one of the donors could give huge impact on finances; 4) only 1 percent of donation income, \$4,800, means very few direct supporters; and 5) vague allocation of overhead costs for 99 percent restricted grants which is very obvious for many NGOs. Recommendations include: 1) most of the staff costs can be allocated to each project so that the overhead ratio would be much lower on the financial statement; 2) more diversified income sources would be necessary other than restricted grants; 3) more donors in different countries and continents would split risks; 4) more unrestricted donations will allow FED to invest its organisational empowerment, also obtaining individual supporters are one of the NGO’s importance core role; and 5) clearer allocation of expenses would increase accountability.

V. CONCLUSION: ALTERNATIVE TO PROJECT-BASED FUNDING “INTEGRATING BUSINESS AND AID”

Although identifying problems and making suggestions to project-based funding would make a great difference, other problems other than overhead cost will still remain. There would always be the donor’s preference on certain agendas, project-to-project period existence, sudden withdrawal by the donor, too many and complicated procedure for grants, and so on. It maybe a good idea to start thinking about generating money instead of receiving grants. Many NGOs have already integrated business and aid. Viravaidya and Hayssen (2006) report that PDA in Thailand now covers over 70 per cent of its annual budget from its own resources for-profit medical clinics in Bangkok and major provincial cities, restaurants, minimarts, and handicraft shop and all profits are used for the NGO activities. They also suggest that business should relate to the NGO’s “core mission” and leverage their know-how, staffs and local advantage.

The ultimate goal of the alternative to project-based funding would be 100 per cent self-sufficiency; being free from grants is not a dream. FED is also preparing to start small businesses such as traditional weaving for migrant women, constructing a guesthouse for

many visitors they have as volunteers, researchers, and NGO staffs, and establishing a small café for them as well. If FED can integrate their core mission with business, they will become one of the new types of NGOs. FED knows that in case they fail to sustain their aid activity, the most serious impact will be on the most vulnerable ones, the 600 children in unauthorised schools, marginalised people staying in emergency shelter, HIV and other sick patients who receive support from FED, migrants exploited by employers, brokers, or the local police. Sustainable self-generated income means they can collect operational expense to continue their activity, and generating more money means they can expect not only to continue their operation but to expand their aid activity and create more chance to survive even in crisis situations. The boundary of not-for-profit and for-profit business is diminishing (Salamon 2001, 30).

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INTERVIEW

INTERVIEW OF HIROSHI HONMA, PROFESSOR EMERITUS AT HOSEI UNIVERSITY

Interviewed by Yukiko ABE, and translated by
Mizuo KUDO *

PROFILE OF INTERVIEWEE

Hiroshi Honma, Professor Emeritus at Hosei University was born in Tokyo, Japan. He started his career at the National Diet Library after completing a master's program at the Graduate School of Waseda University in 1964. On behalf of the Japanese government, he conducted overseas research on refugee law and resettlement and worked on the Shutsunyu-koku kanri oyobi nanmin-hou nintei-hou : the Immigration Control and Refugee Recognition Law (hereafter, Immigration and Refugee Law) reform in 1982. He published many books regarding refugee issues, including Nanmin Mondai to ha Nanika (What is Refugee Issues?). Currently, he is Lecturer of International Law and Refugee Issues at Surugadai University and Tokyo University of Foreign Studies. He also teaches at the University of Tokyo Graduate School of Arts and Sciences, Refugee and Immigration Lecture Series. His favorite motto is "Kabe ni butasukare! (Hit the wall, in other words, try the impossible)."

Q1. You began working on refugee problems after the Japanese government requested you to do the research overseas while you were working at the National Diet Library. Walk us through how it went.

In August 1973, while Kim-Dae Jung, who later became president of South Korea and a Nobel Peace recipient, was staying at a hotel in Tokyo, he was abducted by Korean

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Central Intelligence Agency (KCIA). At that time, Mr. Kim was treated as being on a political exile, not as a refugee or a forced migrant. The abduction of Mr. Kim by the South Korean government caused a heated controversy over Japan's sovereignty and issues concerning political refugees. So, some members of the Diet who were also attorneys pursued the possibility to make a Political Refugee Protection Law; then, there also was a call for the Japanese government to accede to the 1951 U.N. Refugee Convention relating to the Status of Refugees and its 1967 Protocol (hereafter Refugee Convention). I was working as a researcher at the Japanese National Diet Library then. When the Diet members came to ask about the relations between refugee protection and international law, the National Congress Library and surely elsewhere in Japan had no answer to that question. So I took on the research task.

After the fall of Saigon in 1975, a bunch of Indochinese refugees came to Japan as "Boat People." The Ministry of Foreign Affairs knew that in order to help them ratification of the Refugee Convention was required. Since I published "Seiji boumei no houri" (Legal Principles of Political Exiles) in 1974, the Ministry of Foreign Affairs requested me to do a research on the Refugee Convention. I spent four months between 1976 and 1977 in the U.S. and Europe (England, France, the Netherlands, Germany, Switzerland, and Austria) alone gathering data on the Convention status and the societal treatment of refugees in those countries. I turned my report to the Japanese government in 1977.

Q2. What did you learn during your research overseas?

I was most impressed by Germany. There was a principle which stated that "the persecuted possess the right to protection" based on the idea that the asylum seekers are not criminals in the country. It was a constitutional right of refugees as well as a duty for the German government to protect them. The German policy ensured that the government never treated refugees as criminals and that the official attitude remained the same both before and after the refugee status was granted. Thus, during the process of refugee recognition, the asylum seekers, the judges, and the lawyers could hold discussions fairly. One of the reasons why Germany was open to refugees was because at the time Germany was experiencing high economic recovery and so foreign labor force was increasingly being welcomed.

On the other hand, in the Netherlands and Austria, citizens and refugees were residentially segregated. Although Europe has an advanced system of refugee protection, problems remain. Seeing such reality, however, I grew a sense of optimism that refugee settlement can begin in Japan without being perfect at first.

Q3. Why did it take six years for the Japanese government to ratify the Refugee Convention in 1981 since the first arrival of Indochinese refugees in Japan in 1975?

Although Japanese Ministry of Foreign Affairs almost decided to join the Refugee Convention states in 1975, it took time to prepare the necessary social conditions in Japan. To list one of the actual problems we faced, the principles of legal standing, social welfare, and administrative assistance guaranteed by the Refugee Convention would require a higher level of social status being granted to incoming refugees than to the long-time residing *zainichi*¹ migrants. In order to ratify the Refugee Convention and for Japan to adjust to it, it was necessary to improve the legal status of *gaikoku-seki* (foreign nationals) including that of East Asian *zainichi* migrants.² Doing so required legal and administrative reforms, for example, the removal of the nationality-based conditionality of the national health care law. Furthermore, it took time to discuss which ministry is going to process the refugee determination. Eventually, the Ministry of Justice, which runs the Immigration Bureau, took on the task, and Immigration and Refugee Law replaced the old immigration law.

The decisions [which took six years to realize] reflect the time and situation [Japan was going through]. If Japan decided to receive any Convention refugees unconditionally, it was possible that a massive influx of refugees into Japan might have taken place. The situation of neighboring countries North Korea, China, and then autocratic South Korea at that time have indeed also affected the case.

Q4. After the Immigration and Refugee Law reform in 1982, did the Japanese government examine programs such as settlement program for Convention refugees, other than the refugee determination standard?

Although we discussed before the reform about the refugee determination standard, we did not proceed to talk about living assistance to refugees after their settlement in

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- 1 Although not specified, the phrase *zainichi*, or meaning broadly any foreign nationals living in Japan, is here being used by the interviewee to indicate the East Asian migrants especially those from Korean peninsula and Taiwan who are forced to come to Japan before or during WW II.
 - 2 Here the interviewee clearly distinguishes *zainichi*, or narrowly meaning migrants from Korean peninsula and Taiwan living in Japan and their offspring as noted above, and the general term foreign nationals (*gaikoku-seki*) to indicate any foreign nationals residing in Japan.

Japan. At the time, Japan prioritized the Japanese language education and the settlement program for the existing Indochinese refugees, so that we could not spend enough time to discuss the treatment of the Convention refugees. Actually, back then there were so few Convention refugees in Japan that the government was rarely required to handle the issues regarding the Convention refugees even at the policy level.

Q5. During the Cold War many refugees from the Communist countries migrated into the West. However, Japan encouraged Korean zainichi people who moved to Japan before WW II to voluntarily repatriate to their origin countries between 1959 and 1984. Why so?

Japan always wanted to increase its diplomatic power relative to the other Asian countries. The core of its strategy was to strengthen diplomatic channels with South Korea, China, and North Korea. Even with North Korea, the Japanese government had hopes to establish diplomatic relations, if possible. In light of such diplomatic considerations, people escaping those countries and asking for protection were not always welcomed in Japan. At that time, refugee status determiners worried that protecting political exiles, anti-governmental activists, and key political persons might result in the termination of certain diplomatic relations. It is not a mistake to treat such persons as Convention refugees, yet not so are all the asylum seekers. But *zainichi* repatriation is another issue. As Japanese people returned from Korean peninsula and China on their own after WW II defeat, the Japanese government had to be responsible for assisting Korean and Taiwanese people to repatriate because they had been coercively taken to Japan during the war.

Q6. How do you describe the administrative efforts of the current Japanese government regarding refugee politics?

The immigration law reform in 2005 provided mainly two new rules: tentative stay permission system (the Japanese government grants permission to tentatively stay in Japan to asylum seekers during their screening), and *nanmin sanyoin* (refugee examination counselors) system³. Also even those determined not to be refugees, but believed to face considerable risk in the country of origin began to receive special residence permit positively from the Japanese government. On the other hand, it is absurd that far more num-

3 The counsellors made up of private-sector persons examines an asylum seeker's document as the second panel instead of the government officials after the asylum seeker failed to receive refugee recognition by the Japanese government.

bers of asylum seekers receive special permits than those granted the actual refugee status. I believe that the methods of refugee status determination need to be reexamined.

The biggest problem of the process of refugee determination in Japan is the judicial court. Refugee determination is in essence an appeal to court as to confirm their status; therefore, the procedure follows the guidelines of civil suit. During civil suit, the person who appeals is held responsible to demonstrate his or her circumstances. As asylum-seekers rarely possess evidence to prove their refugee claims, this situation is very difficult for them. The court should consider alternative criteria in such a case, but it insists on keeping the current situation because “the court is not a legislative body.” Although recently officers from the Ministry of Justice have started to receive training provided by UNHCR and deepen their knowledge and understanding regarding refugee recognition, the basis for the determination is still *stare decisis*.

I also think that there is a need of people who can legally assist asylum seekers. Currently, while asylum seekers might learn from lawyers and NGO officers about how to turn in required papers, they do not receive sufficient guidance regarding practical writing tips and techniques. As refugee inquirers and councillors try harder to judge their status fairly, asylum seekers also need to skillfully demonstrate the threat of persecution they face in the country of origin. In order to do so, someone needs to teach them Japanese culture, society, and refugee determination process and how to express themselves effectively. So-called paralegals such as judicial and administrative scriveners can be involved in this.

In addition to refugee determination procedures, refugees also need institutional support for living in general. Currently, the determination process is conducted by the Ministry of Justice, and meanwhile living assistance is being provided by the the Refugee Assistance Headquarters (RHQ) under the supervision of the Ministry of Foreign Affairs. Asylum seekers waiting to be granted refugee status have to suffer unstable living; it is time to consider this practical issue.

Q7. In what ways are you going to stay engaged with refugee issues in Japan?

The international society is based on “state sovereignty” system, and refugee law is inevitably dependent on it. I would like to research how should refugee determination process should be in order to include aspects of individual human rights protection. This is beyond the scope of the ongoing definition of refugee status. For example, consider a situation where a terrorist escaped from his group and ends up reaching another country; although he does not possess anti-governmental opinions [which is the necessary condition of refugee in definition], he still faces the risk of persecution back in his country of origin due to his rejection to obey orders of the terror group. I would like to expand the notions of international human rights and the definition of refugees, and see how, as a researcher I can think more expansively about the protection of individuals.

The preamble to the Japanese Constitution states that “we [Japanese people] recognize that all people of the world have the right to live in peace, free from fear and want.” Globally, people facing poverty and threats are deeply connected with refugee issues. Refugee protection is not something unrelated to the issue of protection of individual human rights. Furthermore, it is deeply related to the principles of the Japanese Constitution. Each and every one of us must recognize these points.

I’m considering building a network of researchers. Often both subjective and objective criteria are mentioned during the determination process, but the ongoing objective assessment does not appear to be durable any longer. This is probably one of the reasons why refugee acceptance rate is extremely low in Japan. The Japanese Ministry of Justice mainly collects information in and around the capital cities of refugee’s countries of origin—in the case of Myanmar, just in and around Yangon—and therefore information regarding minority ethnic groups on the outskirts is rarely covered. However, the actual safety level varies spatially according to regions even it is the same country.

Germany has its independent intelligence team for refugee status determination, and a nationally-run documentation center has been established as well. When Hazaras, a minority people in Afghanistan, came to Germany asking for refugee protection, the German court recognized that “Hazaras might encounter danger in the region between Kabul and areas where Hazaras can safely reside.” In other words, Germany is able to collect the local information to that extent. Japan also has many specialized researchers in institutions such as Tokyo University of Foreign Studies [so it must also be able to]. Using the network of such people, I will create better environment in providing true “information regarding the country of origin” to the Japanese government, so that it will be used to make better refugee determination decisions.

REPORT OF SEMINAR

SAVING INTERNATIONAL REFUGEE LAW

Account of the Keynote Speech by Professor James Hathaway* at the University of Tokyo, Komaba Campus, September 25, 2010.

ABOUT THE CONFERENCE

As part of the 2010 meeting of the Japan Consortium for Human Security Education and Research held on September 25 and 26 at the University of Tokyo, Komaba Campus, the Graduate Program on Human Security (HSP) organized an academic conference entitled: "Human Diversity and Business." On September 25, the first part of the conference was devoted to the "Rights-based Approach for Refugee Protection" where Professor James Hathaway gave the keynote speech. The proceeding section provides an account of his lecture.

- James Hathaway's lecture focused on a specific aspect of human security – the international refugee regime. Despite acknowledging the value of the human security paradigm as a uniting force, he also expressed concern that the amalgamation of different regimes into a singular unit can undermine existing frameworks. Hathaway thus made a specific plea for the continued relevance of International Refugee Law and proceeded to refute what he claimed are prevarications to its structure and purpose.
- According to Hathaway, "governments of the developed world are now appropriating the language of global burden and responsibility sharing in refugee law to further what is in truth only a mildly attenuated global apartheid regime under which refugees in the less developed world not only remain there but remain there under conditions that are generally rights-abusive and often quite literally life-threatening." Hathaway identified the following three arguments in which governments of developed states have distorted the object

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and purpose of the 1951 Convention relating to the Status of Refugees (Refugee Convention): 1) providing asylum is an obligation of last resort; 2) refugees who arrive without prior authorisation are illegal; and 3) harsh treatment of asylum seekers in their territorial jurisdiction is justified for the purpose of resource reallocation (refugee processing is too costly; the monetary resources could be more efficiently spent closer to the places of origin).

- James Hathaway argued that a refugee has no duty to seek protection in the first country in which s/he arrives or within her/his region of origin. To the contrary, unless a refugee has actually found protection in a particular state (protection defined not just in terms of *non-refoulement* but the realisation of the full entitlement of rights articulated within the Refugee Convention i.e. freedom of movement and participation in the economy), international law requires deference to the wishes of the individual about where s/he seeks recognition of her/his status. This view is affirmed by UNHCR Executive Committee Conclusion No. 15 (1979). The right of a refugee to ask where her/his claim should be assessed, however, does not infer that this is a right to choose where to live indefinitely.
- With regards to the claim that people who arrive without prior authorisation are illegal, the Refugee Convention's Article 31 explicitly allows refugees to arrive illegally without being subject to penalisation. The drafters of the treaty recognised that the influx of displaced populations cannot be avoided in major humanitarian crises and that states cannot obliterate their immigration systems. Article 31 provides an avenue for states to maintain control of immigration in such cases. Furthermore, any refugee who comes under the jurisdiction of a state party (this could be in the high seas if a party were to stop and detain a ship carrying refugees) is protected under the Refugee Convention. The International Court of Justice has affirmed that human rights obligations follow presumptively whenever a state exercises jurisdiction; in other words, if a state takes authority over someone, then that state has the responsibility for the welfare of those it purports to control even if the initial act of detention is illegal.
- The third argument put forth by developed states concerning fiscal reallocation accompanied by resettlement option as a justification for the harsh treatment of refugees within their territorial jurisdiction is more complex. There is no doubt that the burden and responsibilities of refugee protection are unfairly allocated and that more than 90 percent of refugees are located in the developing world; hence, the argument for burden-sharing is a compelling one. For example, in the following countries the refugee to population ratio is as follows: Chad, Iran, Jordan, Lebanon, Pakistan 1: 100, Canada 1:460, US and EU 1:1,900, and Japan 1:41,000. Moreover, less than US\$1 per day are provided to refugees under UNHCR's care while developed states spend about US\$20,000 per claimant during the refugee status determination proc-

ess. The problem with the reallocation argument, Hathaway stated, is that there is no existing framework which binds developed states to commit a significant figure and no oversight mechanism which ensures that the fiscal resources reach the refugees. The governments of developing states affected by refugees who argue that they do not have the resources to cope are also just as disingenuous by 'warehousing' refugees; refugees are essentially used as hostages to attract aid from the international community. Furthermore, when developed states send aid to camps run by UNHCR and NGOs in the developing world, they also participate in the violation of refugee rights as the conditions in the camps often breach the provisions of the Refugee Convention.

- Hathaway stated that the Refugee Convention promotes the goal of refugee autonomy and self-reliance; this is what governments should support. The inherent objective of the Convention is for refugees to be self-reliant so that they do not become a burden to the host states. Hence, they should be allowed to have businesses, to work and be productive to meet their own needs; failure to provide the conditions for refugees to be self-autonomous creates a security problem. The argument for strategic resettlement is good in principle; however, Hathaway stated, for all the rhetoric employed by government of the developed states, fewer than 100 thousand out of the 13.5 million refugees were resettled last year and only 5 countries excluding Japan participated in a meaningful way to the program. Moreover, the resettlement candidates are usually not those who are most in need but those who are educated.
- James Hathaway also addressed two areas where refugee advocates have been unhelpful. Firstly, International Refugee Law does not require states to admit refugees as permanent immigrants; it is not immigration law – it is human rights law. Refugee Law provides a human rights remedy for the duration of the risk, and if and when there is a durable solution to the problem which caused the refugee to flee, "the status evaporates." Hence, Refugee Law is a 'trump card' to migration control. It is not constructive for advocates to argue that refugees remain indefinitely within the host state; this approach encourages government reactions to be infused with a migration rather than a human rights mindset. Secondly, there is no impediment to states working together to share responsibility for protection. It is not the case that a refugee who arrives at the country of first instance must be protected there indefinitely. So long as the sharing is done before lawful presence (in Japan, this means admission to the assessment system) is established, it is legal as long as there is no risk of *refoulement* for the refugee claimant to be transferred to another state party for her/his claim to be assessed. Once lawful presence is established, Article 32 of the Convention governs and no more transfers are allowed.
- James Hathaway argues that International Refugee Law is worth saving be-

cause it is reconcilable with the self-interest of states; this is the reason why the refugee system has survived for this long. States created the Refugee Convention as a reflection and recognition that the flow of those forcibly displaced in humanitarian crises are unstoppable and that the Convention plays a legitimising role so it doesn't threaten the norm of migration control. It is also consistent with democratic values particularly in states like Japan. States committed to the rule of law understand that whatever rules are implemented must enjoy the favour of constitutional and other human rights protection if they are to be thought credible by the populace. If states act in an arbitrary manner, this undermines their credibility in the international forum. International Refugee Law rejects arbitrariness; there is one neutral definition agreed upon by states and articulated in the Refugee Convention. The refugee regime is a principled means to migration control.

- James Hathaway clarified his position in reference to the argument that the Refugee Convention requires revision. Hathaway does not advocate re-writing the Convention and asserted that it is more than an adequate basis for refugee protection in 2010; there is no need for a new treaty. Instead, Hathaway posited the following ways to reinvigorate the existing regime without revising the Refugee Convention:
- Refugee protection must be viewed as a human rights remedy and not as an immigration path; however, there will be exceptions which call for immediate permanent immigration such as unaccompanied minors and severely traumatised torture victims – these cases are, however, the minority of the overall refugee flow
- Governments may allocate responsibility to share out protection among themselves; this has to be not what is happening in Europe under the Dublin Convention but a genuine rights reallocation of responsibility.
- There should be a common but differentiated responsibility premised upon the objective that every refugee is received in dignity and guaranteed full protection of her/his rights for the duration of the risk. Different states may contribute in different ways to achieve this end – which can be classified as a form of 'collective insurance.' On the financial side, there must be a major binding and practically enforceable obligation; UNHCR could be used to fulfil the function of a securities and exchange commission which 'holds the purse' and ensures that rights are honoured in recipient areas. This will empower UNHCR to perform its function more effectively. On the human side, different protection roles can be given to different countries; the comparative advantage of various state parties should be utilised. Different states could be given responsibility for short-term assessment, protection for the duration of the risk (about 4-5 years), and ultimate permanent solution for those who cannot go back to the country of origin after 5 years.

- There should be a meaningful oversight of the regime. The Refugee Convention is the only major human rights treaty in the UN system with no independent supervisory mechanism. UNHCR is not empowered to fulfil this function and the international community must address this gap.
- James Hathaway concluded with a call for leadership to revitalise International Refugee Law and recognised the critical role Japan can play under its human security agenda. He also reiterated that refugee protection should still be a Convention-based regime which seeks meaningful protection of refugees and recognises the interests of all states.

ASIAN DIGEST ON HUMAN MOBILITY

THIRD COUNTRY RESETTLEMENT PROGRAMME IN JAPAN

Junko MIURA and Shikiko MASUTOMI*

I. OVERVIEW

Japan has become the first Asian country to implement the third country resettlement programme promoted by UNHCR, accepting 27 Myanmar refugees from Mae La refugee camp in Thailand this year. Whilst staying in an accommodation provided by the Refugee Assistance Headquarters (RHQ) in Tokyo, the refugees are currently undergoing a six-month training programme designed to equip them with essential Japanese language, cultural knowledge and other necessary skills.

Despite the modest number of refugees being resettled, the implementation of the programme has been welcomed by UNHCR and there has been sufficient media coverage to suggest that there is some public interest. The UN High Commissioner for Refugees António Guterres visited Japan in November to meet with officials and the refugees themselves.

However, various sources have been critical of certain aspects of the programme management, which have suggested a lack of coherence in the process. For example, the accommodation for the refugees was organised only two weeks before their arrival, and they have been signed up for a settlement support programme that only runs for six months, after which the refugees are expected to stand on their own feet. This is seemingly due to lack of funds, although approximately 150 million yen is already being spent on the programme.

The sum, which covers the main costs for the resettlement including accommodation and support systems, is funded by the Ministry of Foreign Affairs and passed onto the RHQ, a government-related organisation, who is entrusted to provide the necessary services for the refugees. The Agency for Cultural Affairs has allocated about 32 million yen to the Japanese education course for Convention¹ refugees and the refugees accepted under the resettlement programme², and the Ministry of Health, Labour and Welfare,

* Junko MIURA : CDR staff. Author of Chapter II; Shikiko MASUTOMI: CDR staff. Author of Chapter I and III.

1 The United Nations Convention Relating to the Status of Refugees, usually referred to as the 1951 Geneva Convention. Not to be confused with the “Geneva Conventions”, which deal with sanctions of conduct in times of war.

2 Agency for Cultural Affairs 2010.

approximately 16 million yen to the vocational counselling service.³

II. THE THIRD COUNTRY RESETTLEMENT PROGRAMME AND THE WORLD PERSPECTIVE

Protracted refugee situation, one of the most crucial issues for refugees in recent years, has been discussed as the most difficult and intricate humanitarian problem. It explains the situation for refugees who have escaped from the emergency situation in their country of origin, but are still in a state of uncertainty for the future.⁴ According to UNHCR, protracted refugee situation is defined as refugees “in a long-lasting and intractable state of limbo” and “their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile”. Given this situation, UNHCR gives high priority to protracted refugee situations so as to respond among the principal aims of several crucial UNHCR initiatives⁵

Large quantities of the world’s refugees are placed under protracted refugee situations living in camp-like circumstances or insecure urban setting for 5 years or more after their displacement.⁶ The average duration of refugee situations was 9 years in 1993, but it became significantly longer in 2003, which was 17 years.⁷ It is not rare that several generations of one family spend their time only in refugee camp. Today, refugees around the world are facing more protracted situations, and their human rights have not been defended.

Consequently, it is evident that durable solutions such as repatriation, local integration, and resettlement are required for protracted refugee situation. In the following section, UNHCR’s third country resettlement programme will be explored as one of the significant solution.

A. The Latest Situation of Resettlement

UNHCR gave the latest report at the 16th Annual Tripartite Consultation on Resettlement Geneva in July 2010. It is said that there is a big gap between resettlement needs

3 Ministry of Health, Labour and Welfare, quoted in Refugee Assistance Headquarters 2011.

4 UNHCR 2009.

5 UNHCR 2004, 1.

6 UNHCR 2009, 4.

7 UNHCR 2007, 108-109.

for refugees and available places.⁸ Currently, approximately 805,500 refugees are in needs of resettlement, which represents only 10 per cent of the global refugee population. In 2010, however, less than 80,000 places for UNHCR resettlement submissions were supplied, which is less than half of resettlement needs in 2011.⁹

Furthermore, the number of refugees in need of resettlement has increased. For instance, in 2009, the figure had doubled to 128,000 since 2005.¹⁰ In addition, UNHCR forecast that 172,300 refugees will be in need of resettlement in 2011. Iraqi, Myanmar, and Bhutanese refugees account for 70 per cent of the total UNHCR-facilitated resettlement in 2009.¹¹ Amongst major host countries involved in resettlement programmes are the United States (62,011), Australia (6,720) and Canada (6,582).¹² However, only limited available resettlement places have been provided. Faced with the critical situation, UNHCR encourage more countries to form resettlement programmes. Since 2008, 12 new countries have showed willingness to receive a limited number of resettlement submissions, of which seven countries established resettlement programmes: Bulgaria, Czech Republic, France, Portugal, Romania, Spain and Japan have showed willingness to receive a limited number of resettlement submissions.¹³

B. UNHCR's Definition of Resettlement

UNHCR gives clear guideline about the Third Country Resettlement Programme in the publication entitled, *Resettlement Handbook* (2004, UNHCR). It indicates that resettlement could be used as a tool of refugee protection, durable solutions, bearing an element of burden-sharing. In order to provide protection, the selected refugee is relocated from a State, where asylum is initially sought, to a third State and received as refugee with permanent resident status.¹⁴ According to UNHCR, there are three functions of resettlement.

Resettlement is:

1. "A tool to provide international protection and meet the special needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge."

8 UNHCR 2010b.

9 Ibid., 1.

10 Ibid., 3.

11 Ibid., 3-4.

12 Ibid., 44.

13 Ibid., 7.

14 UNHCR 2004a, 1.

2. "A durable solution of larger numbers or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration."
3. "It can be a tangible expression of international solidarity and a responsibility sharing mechanism, allowing States to help share each other's burdens, and reduce problems impacting the country of first asylum."¹⁵

It is necessary to resettle refugees, who are in danger of refoulement, to secure their safety. To provide a durable solution for refugees, who are unable to return home or cannot remain in the country of origin, is the main purpose of resettlement. The strategic use of resettlement defined by the Working Group on Resettlement (WGR) is "the planned use of resettlement in a manner that maximises the benefits, directly or indirectly, other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting state, other states or the international protection regime in general."¹⁶

C. The Historical Background of Resettlement

Resettlement has long been considered as one of the main or partial solution for refugee protection. Since 1950, the United Nations High Commissioner for Refugees (UNHCR) has played a crucial role in the refugee protection in accordance with the Statute of UNHCR "to provide international protection and to seek permanent solutions for the problem of refugees".¹⁷ In order to settle the problem of European refugee camps, UNHCR introduced the resettlement system after the Second World War. The largest example of resettlement today took place in South East Asia, when the Saigon regime collapsed in 1975 and an enormous exodus from Vietnam followed. Those who crossed the seas of South East Asia are called "boat people" and approximately 700,000 Vietnamese were resettled in other countries.¹⁸ Currently, resettlement is considered as a global programme, which benefits refugees from various nationalities.

D. UNHCR's Resettlement Criteria

In addition, UNHCR adheres to a set of resettlement criteria. Individual countries, in general, assent to UNHCR's resettlement criteria. Resettlement should not be promoted by value judgments, but it must be decided by the individuals' needs. The following lists

15 Ibid.

16 UNHCR 2003, 3.

17 UNHCR 2004b, 9.

18 Ibid.

are the criteria for determining resettlement as the appropriate solution guided by UNHCR, resettlement could be considered as a durable solution.¹⁹

- 1) Legal and Physical Protection needs
- 2) Women-at-risk
- 3) Survivors of Violence and Torture
- 4) Children and Adolescents
- 5) Urgent Medical Needs
- 6) Older Refugees
- 7) Family Reunification
- 8) Lack of Local Integration Prospects

E. The Role of IOM for Resettlement

Having looked at UNHCR's resettlement concept, it could be also significant to consider the role of another global organization. International Organization for Migration (IOM), established in 1951, is a global inter-governmental organization working in the field of migration. Currently 127 states are members of IOM, and it carries out 2,360 active programmes in more than 460 field locations.²⁰

Having sufficient experience to deal with migration issues, IOM also provides services and guidance to governments and refugees in accordance with its objective to promote "humane and orderly migration for the benefit of all" and to become a bridge between refugees and receiving communities.²¹ Its activities support the safety for travelling, health, integration and reintegration of migrants, refugees, victims of man-made and natural disasters around the world.²² In this way, as well as UNHCR and governments, IOM plays an important role for supporting refugees to resettle in the third country by working closely with them and NGOs.

As one of its crucial activities, it assists the refugees for resettlement referred by UNHCR and governments. IOM, furthermore, indicates a few guidelines regarding resettlement support from various ways. Beginning with facilitating the legal process for refugees, IOM provides the medical care, cultural orientation including language training to survive in new circumstances, and it assists refugees transfer to new communities. The following are IOM's guidelines:

- Processing legal documents and requirements
 - to facilitate the safe and expedient transfer of refugees accepted for resettlement

¹⁹ Ibid., 4.

²⁰ IOM 2011.

²¹ IOM 2011, 1.

²² Vojackova-Sollorano 2009.

tlement across international borders all the way up to their destination country.

- Medical screening and counselling
 - to ensure that refugees are fit to travel and meet the requirements of the host country. This includes the provision of treatment if and when needed.
- Cultural orientations
 - to give refugees realistic expectations of resettlement through briefing them about life, basic adaptation, and culture in the resettlement country.
- Language and skills training
 - to equip refugees with basic communication and vocational skills to be able to quickly adjust and become self-sustaining.
- Pre-departure orientations
 - on traveling by air, packing, and the importance of travel documents since most refugees are first time plane travellers.
- Movement assistance
 - to provide in coordination with authorities, non-governmental organizations and others.²³

IOM, currently, is providing the largest resettlement orientation in the world. From 1975 to 1995, they gave resettlement support more than 1.5 million Indochinese refugees. Since 2004, more than 57,000 refugees departed from Thailand to 11 countries by IOM assistance. In Thailand, their activities in terms of the third resettlement programme supported by more than 200 staffs are held in 9 refugee camps. ²⁴

F. IOM and Japan

In accordance with IOM's mission, IOM also supports the Japanese Government in terms of the resettlement project that Japan initiated: Japan accepted 27 Myanmar refugees from Mae La refugee camp in Thailand in 2010. The role of IOM for the project is providing logistical support to the Japanese Government selection missions in order to select refugees from the list given by UNHCR.

To promote awareness of the resettlement project in Japan and supporting the smooth integration of refugees in the society, IOM has an important role working with the government and various organizations in Japan. The following are the requests by the Japanese Government to IOM.

1. to provide necessary logistical support to the Government of Japan's interview/selection missions

23 IOM 2010b.

24 Vojackova-Sollorano 2009.

2. to conduct medical screening/treatment for the interviewed/selected refugees
3. to implement pre-departure Cultural Orientation and Language Training
4. to facilitate the movement of the refugees from Thailand to Japan.²⁵

In this way, IOM has been providing technical advice for all migration policy initiatives directed by politicians, business community and experts in Japan. With regards to promoting the awareness in Japan, IOM is also organizing seminars and events in collaboration with the Ministry of Foreign Affairs, academic institutes, international organizations, embassies, NGOs, and local government.

III. PILOT PROGRAMME

A. Outline

In December 2008, Japan announced its decision to accept 90 Myanmar refugees from Mae La refugee camp in Thailand over the course of 3 years (approximately 30 refugees per year²⁶) under a pilot resettlement programme. The implementation of the programme is intended to help ameliorate the refugee situation in Asia²⁷, and Japan has chosen Myanmar refugees because their country is amongst those that have produced the largest numbers of refugees on the continent.²⁸ The refugees are to be selected in family units, and they are to receive pre-departure and post-arrival language education, cultural orientation and vocational counselling so that they can settle successfully in Japan. Once they arrive in Japan, they are to be interviewed every six months so that the ministries can monitor how they have settled by assessing their level of competence in Japanese and their living situations. If the programme proves successful, Japan is likely to accept more refugees in the future. The small intake of refugees is thus claimed to help achieve better quality in the undertaking of the programme.

25 IOM 2010a.

26 The Japanese government has not stated any reason behind the decision on the number of refugees accepted under the pilot resettlement programme. Some have, however, pointed out the equal importance of reserving means for refugees who come to Japan directly from their country.

27 Cabinet Secretariat 2008.

28 Ito 2010.

B. Initiative

Japan's decision to participate in the Third Country Resettlement Programme was prompted by a number of factors.

UNHCR has been keen to encourage Japan to develop a more generous protection regime in its own territory, as the country's contribution to refugee issues, albeit financially significant, has been limited to overseas activities.²⁹ In March 2006, the organisation invited Japan to attend a regular meeting of the WGR³⁰ as an observer amongst six other non-resettlement countries³¹, who were all invited for the first time. Japan and other observer countries were also invited to the Annual Tripartite Consultations in June 2006, a meeting held every June or July in Geneva since 2000, bringing together UNHCR representatives with government and NGO representatives from the countries involved in refugee resettlement. They joined the WGR composed of 10 traditional resettlement countries (USA, Canada, Australia, New Zealand, Finland, Sweden, Norway, Denmark, Switzerland and the Netherlands), as well as eight emerging resettlement countries (Benin, Burkina Faso, Chile, Argentina, Brazil, Ireland, Spain and Iceland) and NGOs involved in resettlement. This was a significant move for Japan, who had only attended the Executive Committee meeting as a member since 1979.

The UN High Commissioner for Refugees António Guterres has made seven visits to Japan since he assumed his current post in May 2005. Japan's implementation of the Third Country Resettlement Programme had come into consideration since Guterres' meeting with the then Minister of Foreign Affairs Masahiko Takamura and the then Minister of Justice Kunio Hatoyama in 2007, according to media sources.³² During Guterres' visit in 2008, the then Prime Minister Taro Aso, who had already held talks with the UNHCR chief as Minister of Foreign Affairs in 2006, officially unveiled Japan's plan to adopt the Third Country Resettlement Programme in 2010. In November this year, Guterres did not only meet with Japanese government officials, but also visited the recently resettled Karen refugees.

In preparation for the implementation of the Third Country Resettlement Programme, "A Report on the Local Integration of Indo-Chinese Refugees and Displaced Persons in Japan"³³ was commissioned by UNHCR Representation in Japan in 2009, so as to reflect

29 In 2006, Japan donated 75,149,096 USD to UNHCR (third most generous donor). Today, Japan is the second largest donor, with a contribution of 143,494,234 USD.

30 The Working Group on Resettlement was established in June 1995, involving the participation of the ten traditional resettlement countries (USA, Canada, Australia, New Zealand, Finland, Sweden, Norway, Denmark, Switzerland and the Netherlands) to discuss their annual refugee resettlement quota.

31 Belgium, Czech Republic, Estonia, Germany, Mexico, and Switzerland.

32 Yano 2010.

33 Kawakami et al. 2010.

on what might be learned from Japan's experience with Indo-Chinese refugees and other displaced persons, thereby raising awareness of the new resettlement project.

Meanwhile, there was an attempt within the Japanese government to establish a new comprehensive immigration policy, primarily due to a lack of young workforce to support its ageing population. By 2008, the urgent need for a substantive solution was becoming visible. In June, a group of Liberal Democratic Party (LDP) members led by Hidenao Nakagawa announced a proposal to let in 10 million immigrants in the next 50 years³⁴, though this never led to any formal debate or discussion, and in July the government formulated the "Global 30", a project that aims to take in 300,000 international students by 2020 in order to internationalise selected universities.

However, such coincidence was hardly enough to redirect the government's interest to the refugee resettlement programme. There was a considerable amount of work involved behind the scenes, and the realisation of the programme was, above all, facilitated by a former UNHCR official, Saburo Takizawa³⁵, who has had a significant influence over the government's decision-making and played a catalytic role in the process, working closely with the Ministry of Justice where he has served in the past. In order to consolidate the consideration of the programme, an inter-ministerial study group on refugee resettlement issues was initiated by the government in September 2007. Takizawa's efforts were then supported by the cooperation of Kunio Hatoyama, the Minister of Justice at the time, who shared an understanding of refugee issues and authorised the undertaking of the pilot resettlement programme by the end of 2007.

Some speculate whether the Japanese government's adoption of the programme would have an effect on the international community's view on the country in its approach to the idea of burden-sharing. The vice president of the Federation of Workers' Union of the Burmese Citizen (FWUBC), Phone Hlaing, noted that "almost everyone thinks Japan wants to be a permanent member of the UN Security Council, so they want

34 A similar proposal had been made by a handful of the opposing Democratic Party members in 2003. The so-called "10 million Immigrants Scheme" was put together by Keiichiro Asao, Kohei Otsuka, Goushi Hosono, Motohisa Hurukawa, Koji Matsui, and Takeaki Matsumoto and publicised by the monthly magazine *Voice* in its September 2003 issue.

35 Takizawa joined the Ministry of Justice in 1976 where he was involved with Indo-Chinese refugees issues within the Immigration Bureau, and in 1982 he joined the United Nations Office in Geneva. Since, he has worked for the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and United Nations Industrial Development Organization (UNIDO). From 2002, he also served as Controller and Director at the UNHCR Headquarters. In 2007, he became the first UNHCR Representative in Japan, and worked with the Japanese government to improve Japanese refugee policy until his retirement in August 2008.

to show their leadership, their responsibility.”³⁶ Some experts such as Masako Suzuki an attorney at the Tokyo Public Law Office have also pointed out the possibility of Japan finding positive outcomes besides solutions to the refugee issue.³⁷

C. Pre-departure: The Refugees and the Selection Process

The resettled refugees are composed of 5 families of the Karen ethnic group, a minority in Myanmar. They arrived in two groups: the first 18 refugees (three families) arrived on the September 28, while the remaining 9 (two families) postponed their flight to Japan to the October 13 as some of them had developed flu symptoms before departure.

The 27 Karen refugees were selected out of some 50 applicants in Mae La refugee camp, the largest of nine on the Thai border. Some of them had spent over 10 to 20 years at the camp, and some were born there. They underwent a selection process, which involved dossier screenings and interviews as well as medical screenings. First, candidates were nominated in family units by UNHCR in light of the following eligibility criteria defined by the Japanese Ministry of Justice in December 2008³⁸:

1. The candidate must be recognised by UNHCR as a refugee being in need of international protection and for whom Japan is recommendable to seek protection.
2. The candidate must have local integration prospects in Japan.
3. The candidate must be likely to find employment in Japan in order to support themselves and their dependants.

In November 2009, a dossier screening was conducted to verify whether the nominated candidates had any criminal records, or had been involved with any terrorist organisations or activities, and whether they would be likely to disturb public security in Japan.

In 2010, the Ministry set additional eligibility criteria with the consent of UNHCR:

1. The candidate must be a Myanmar refugee based in Mae La camp in Thailand.
2. The candidate must be a refugee registered with the Thai government.
3. The candidate must be a UNHCR mandate refugee.
4. The candidates must be a family consisting of parents and related children sharing common living expenses and having a prospect of becoming self-reliant as a family unit.

36 Ocheltree 2010.

37 Ito 2010.

38 These criteria were revealed by Shigeru Ishiguro, the Director of Refugee Recognition Section, Immigration Bureau, Ministry of Justice at the United Nations University Symposium “Resettlement in Japan: Bringing Refugees to Better Protection and Integration”, held on August 25, 2010.

5. The candidate must have no criminal record.
6. The candidate must have good enough health to be able to live a social life in Japan.
7. The candidate must have prospects of adapting to the Japanese society.

Those criteria were only revealed in August 2010 and only orally by an Immigration Bureau official at a symposium held at the United Nations University.³⁹ The most official form of information available with regards to such criteria was a notification from the Ministry of Justice released on the January 25, 2010⁴⁰, which hinted at the third and seventh criteria listed above.

Various interpretations could be made of the above list of criteria. It assumes that the protection need of the candidate has already been assessed by UNHCR and that he or she is worthy of protection as much as other candidates. The emphasis is therefore on the candidate's adaptability to the host society. There is also a political interest on the part of Japan.: The second criterion implies that it intends not to upset its relationship with Thailand by complying with the Thai definition of a refugee. The fifth criterion suggests that the Metropolitan Police Department has also put forward their interest.

In February this year, with the assistance of UNHCR and IOM, the candidates were interviewed by six inquirers sent by the Japanese Ministry of Justice. The interviews focused on personal history, family situation, willingness to come to Japan, and identity verification. For those selected, health screening was carried out by the IOM in April, prior to final clearance to resettle in Japan. This included radiology examination and serology examination. Having met all criteria, the finalised 27 refugees took part in a pre-departure training between July 28 and August 27, which consisted of cultural orientation and Japanese language lessons.

However, the selected families are said to have had limited knowledge of Japan before their departure, even though they had opportunities to seek advice from other Burmese refugees already residing in Japan. Unlike other third countries accepting refugees such as the USA and Australia where thousands have already resettled from Thai

39 Ishiguro 2010.

40 The Notification No.37 of the Ministry of Justice officially modifies the details of the definition of "long-term resident" in the Appended Table II of the Immigration Control and Refugee Recognition Act, in accordance with its Article 7, Section 2, Clause 1. Section 1 of the said notification lists Myanmar refugees temporarily under protection in Thailand as a category for long-term residents, provided that either of the following is applicable: a) a person recognised by UNHCR who is in need of protection and for whom Japan is recommended as a place to seek protection, b) a person who has prospects of adapting to the Japanese society and finding employment that would enable them to become self-reliant, or his or her dependent or child. Translated by author.

refugee camps⁴³, Japan remains a less familiar destination, of which many seem to be apprehensive. It may be fair to note that the applicants for the resettlement programme resorted to resettlement in Japan having spent so many years at the camp with little or hardly any hope for being accepted by other countries.⁴⁴

D. Post-arrival: RHQ Settlement Support Center and Shinjuku

Although the refugees received through the current resettlement programme are not recognised as Convention refugees but rather as long-term residents, they are eligible for public support. The RHQ Settlement Support Center in the Shinjuku Ward of Tokyo have been providing language training, cultural orientation, skills development and vocational counselling, as well as accommodations and medical care since 2006.⁴⁵ Their programmes last either six months (Intensive Day Course) or twelve months (Night Course). The recently arrived Karen refugees are registered for the former.

On the first days of the training, the Karen families were introduced to skills needed for everyday life in Japan, such as the use of gas cooker and electric appliances and rubbish disposal. They also learnt some Japanese vocabulary and how to write in hiragana.

Various difficulties have inevitably been faced, but these difficulties differ from those experienced by typical Karen refugees who come to Japan on their own. Whereas the latter tend to arrive with a higher educational profile, the former are hardly literate in their mother tongue, which means that the act of writing itself is little practised. They also need to learn how to write down numbers before they start learning simple calculations. They are also advised to adapt to the Japanese culinary culture, despite currently having the option of being reliant on the native cuisine provided by the Karen people who live in Shinjuku. Meanwhile, other basic needs have been met spontaneously with the support of local volunteers.

With the presence of the RHQ Settlement Support Center, Shinjuku has been a natural choice for refugees as a place of settlement. It is home to approximately 1,200 Bur-

43 13,033 refugees were resettled from Thailand to the USA in 2009, according to the IOM. (Monthly statistics of IOM Assisted Departures from Thailand, October 2010)

44 This is attested by Saburo Takizawa's brief account of his visit to a Thai refugee camp, in his interview with CDR Quarterly (Vol. 1, 2010).

45 These services used to be provided by the International Refugee Assistance Headquarters, which had been established specifically for Indo-Chinese refugees. However, it was closed at the end of March 2006 as the intake of Indo-Chinese refugees was concluded. It has been replaced by the current RHQ Settlement Support Center, which has been providing services for refugees from different countries of origin.

mese⁴⁶, most of whom live in the Takadanobaba district and are primarily Burman.⁴⁷ Furthermore, Shinjuku is considered a relatively comfortable area to settle in as it accommodates a higher proportion of non-Japanese: 350,000 foreigners are registered in Shinjuku, which is 11% of the ward's population. The Burmese are the third largest ethnic minority in the area after the Chinese and the Koreans, amongst 118 different nationalities.

In addition, Shinjuku Multicultural Plaza also provides language assistance though not exclusively for refugees but for all foreigners. It also offers counselling in languages other than Japanese, including Burmese and Thai.

E. Commentary

Various criticisms have been made with regards to the Japanese government's management of the programme since its launch. Hiroaki Ishii of the Japan Association for Refugees (JAR) expressed his concerns for its lack of transparency in policy-making and of assessment system needed to measure the degree of success of the programme.⁴⁸ Moreover, the local residents of Shinjuku have expressed concerns over the Ministry of Foreign Affairs rejecting their offer of help in organising the education for the child refugees.

As foreseen in the UNHCR Resettlement Handbook, the high cost of the programme has raised concerns, and an MP from the Liberal Democratic Party, Taro Kono, has asked for it to be reviewed.⁴⁹ Another MP from Your Party, Koichi Yamauchi, has suggested that the current commission for the RHQ could be diverted to local governments and private non-profit organisations who work on a voluntary basis.⁵⁰ Furthermore, media coverage on the refugees progress in settling in Shinjuku seems to be restricted since the government has been highly cautious with the undertaking of the programme, allegedly in fear of criticism.

The Japanese government's attempt to avoid provoking a major public debate is also reflected on the scale of the programme, which they claim will in fact help ensure its quality. Even though it is a pilot programme, an intake of 27 refugees is often considered too small given that UNHCR presented 128,000 refugees for resettlement considerations

46 Ishiguro 2010.

47 Banki 2006, 340.

48 Ishii 2010.

49 The 174th Session of the Diet, Foreign Affairs Committee Meeting No.4, March 12, 2010.

50 The 174th Session of the Diet, Budget Committee, Working Group No.3, Meeting No.2, February 26, 2010.

by States, of which 112,400 were resettled by 19 countries with or without UNHCR assistance during 2009.⁵¹ The USA, the most generous resettlement country, accepted 80,000.⁵² However, Japan is also aware of its homogeneity and tendency to cling to its social cohesion, which makes it difficult for any non-Japanese to integrate into society and could result in dissatisfaction of the resettled refugees. While the pilot project has the potential of expanding the future intakes of refugees if proved successful, it can also deter Japan from accepting any more refugees if unsuccessful.

Meanwhile, UNHCR has played a significant role in bringing together the ministries, support organisations, and refugees already settled in Japan. They organised a symposium prior to the refugees' arrival this year in order to create a dialogue between different contributors. It provided an opportunity for ministerial policy-makers to hear the opinions of refugees and brought forth the issues that the ministries need to address in tandem with each other and with other organisations. UNHCR also issued a Japanese translation of the Resettlement Handbook (November 2004 Edition) this year with the aim of promulgating the resettlement programme.

Speculation around the future of the resettled refugees after the six-month training remains vigorous. They will be able to choose their place of settlement themselves but, since they are not Convention refugees, there is a danger that they might find themselves with even less support and protection. Meanwhile, the City of Matsumoto in Nagano prefecture, with the support of Shinshu Hatsu Kokusai Koken No Kai⁵³, has expressed its willingness to welcome the refugees. This may be a hopeful option for the refugees given that Matsumoto's major industry is agriculture, in which they have indicated their interest, although a detailed integration policy will need to be drawn. However, there is still need for an effective system where local authorities and communities can proclaim their willingness to welcome the refugees.

A good communication and partnership between the ministries, local authorities and non-governmental organisations is essential for a successful continuation of the programme. Special training and support would be helpful not only for the resettled refugees but also for the host community, particularly in more sensitive environments like schools. The biannual monitoring of the refugees' would bring a useful evaluation of the programme and should be analysed thoroughly so that its structure could be revised to improve its quality for the future intakes of resettled refugees.

Most importantly, the precise purpose of a pilot programme as such still remains to be addressed, without which an assessment scheme to measure its success or failure could not be established. The current scale of the programme is far from being consid-

51 UNHCR 2010a, 1.

52 Ibid.

53 Shinshu Hatsu Kokusai Koken No Kai is an association founded by Saburo Takizawa in April 2008, which supports international development and humanitarian assistance, through focusing on refugee issues.

ered an urgent response to calls for a resettlement need for tens of thousands of refugees.⁵⁴ If the Japanese government were to place the significance of the programme on its quality, it would need to delineate what could be described as success. The lists of eligibility criteria for resettlement candidates imply that Japan envisages a successful integration of resettled refugees and, like other countries receiving refugees, intends to reach such aim, not through policies, but by selecting those with the right potentials. For the programme to become a durable solution, a successful integration should entail social benefits for the country of resettlement, as well as for refugees, that would regenerate willingness to welcome more refugees to be resettled. Moreover, there needs to be “a climate in which diversity is valued”; that is, an environment where all identities compliment the existence of each other and are therefore mutually-defining.

Although Japan has no Asian example to follow, UNHCR offers an extensive set of recommendations that could be referred to as a guideline, and traditional resettlement countries with more experience could also be used as case studies, through which Japan could set its own aims and policies. Japan's commitment to the programme is significant, not only in itself, but also for the rest of Asia as it could pioneer a new path to be explored and expedite other Asian States' adoption of the programme.

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JAPAN 2005-2009: IMMIGRATION AND ASYLUM IN NUMBERS

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I. IMMIGRATION STATISTICS

A. Introduction: Immigration Control in Japan

Status of residence for foreign nationals in Japan is issued depending on their purpose of stay. It is divided into 27 types of resident status. Japanese visas are roughly divided into two large categories, which grant permission with limited activities, and without any restriction such as permanent resident or espousal visa. Furthermore, the first type of visa is classified into two kinds which grant permission to work or not to work.

Regarding the entry of foreign nationals, the Ministry of Justice is responsible for immigration control on the basis of the Immigration Control and Refugee Recognition Act and the Alien Registration Law.¹ On arrival, foreign nationals must have permitted status for the period of stay in Japan. Within 90 days of arrival, every foreign national must apply for foreign registration to the local municipal office under the Alien Registration Act.² Over 16 year-old foreign nationals are required to carry their alien registration certificate at all times.³

For legal reasons, it is common for the Japanese government to use the term “foreign nationals” instead of using “migrants” for the people arriving from other countries to Japan. Having no large group of foreign nationals for a long time, there was no independent bureau in Japan that can govern the whole process for non-Japanese nationals including after settlement in Japan. As a result, the Immigration Bureau has been in charge of entry and departure control of foreign nationals. In this context, counting foreign nationals is not an easy process due to its technical and definitional problem; currently, the data given by the Immigration Bureau is the only means of obtaining information on foreign nationals in Japan. The following statistics may not represent the

* MIURA : CDR staff. Author of Chapter I; MASUTOMI: CDR staff. Author of Chapter II.

1 Immigration Bureau 2009, 17.

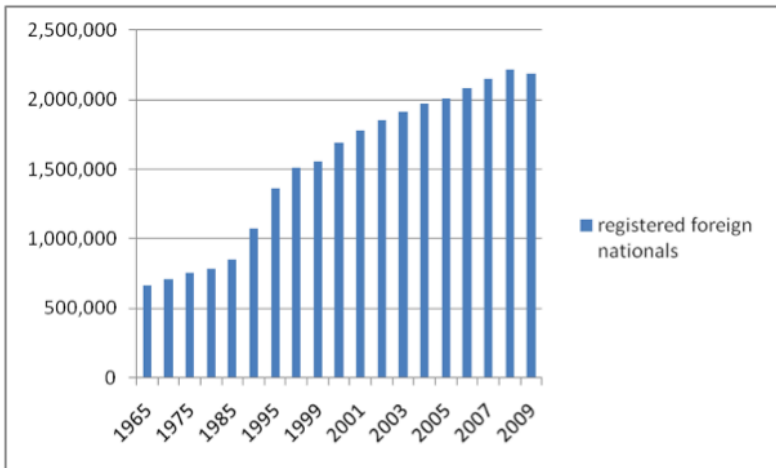
2 Immigration Bureau 2009, 21.

3 Immigration Bureau 2010e.

complete number of foreign nationals though it is presently the most authoritative source of information. They are based on the latest data from 2005 to 2009.

B. Number of Registered Foreign Nationals

Over the last 30 years, the number of registered foreign nationals in Japan has been increasing. In 1980, approximately 750,000 foreigners were registered and the number has grown up to 2,217,426 in 2008, which indicates the highest number for the past 30 years. In 2009, 2,186,121 people were registered as foreign nationals in Japan, which consists of 1.71 per cent of the total Japanese population; however, there was a slight decrease from 2008 to 2009. Compared to the data in 1999, the registered number had risen 40.5 per cent in 10 years. In 2009, 1,180,642 foreign residents consist of female, which is 54.0 per cent, and 1,005,479 male foreigners account for 46.0 per cent.⁶



Graph created by author, source provided by Ministry of Justice, Japan (2009)⁷

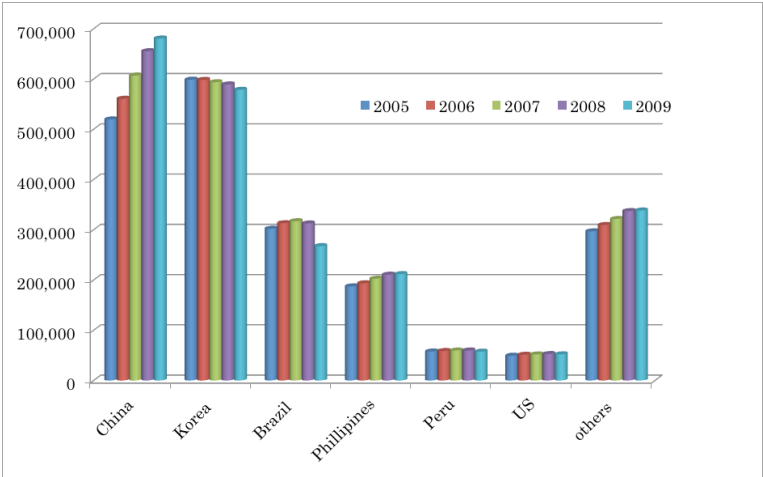
Figure 1: Number of registered foreign nationals

⁶ Immigration Bureau 2010a.

⁷ Immigration Bureau 2009, 22.

C. Nationalities

Those registered immigrants in Japan come from 189 countries and regions. Most are from Asian countries, such as China and Korea (both North and South Korea). Registered immigrants coming from China have the highest number, 606,889 in 2007 and 680,518 in 2009.⁸ The numbers from China have kept growing since the 1980s, and accounted for 31.1 per cent of the total foreign population in 2009. Koreans, however, were the largest foreign community from 1999 to 2006 until the Chinese surpassed them in 2007. The registered number from Peru has been increasing in the past 11 years up to 2008, but it decreased 3.8 per cent in 2009. In the past 10 years from 1999 to 2009 the number of foreigners from China, the Philippines, Brazil, Vietnam, Peru, Thailand, India, and Nepal had gone up as the following graph indicates.⁹



Graph created by author, source provided by Ministry of Justice, Japan (2009)¹⁰

Figure 2: Number of foreign nationals and their country of origin

8 Immigration Bureau 2010b.

9 Ibid.

10 Ibid.

D. Distribution and Resident Status

Tokyo is the main area of residence of foreign nationals; in 2009, there were 415,098 foreign nationals or 19.0 per cent of the overall population.¹¹ It is possible that this number does not include foreign nationals, who have not registered at their local municipal office; hence the concentration ratio of these foreign nationals in Tokyo should be much higher than the statistics show. Numerous Korean Japanese tend to concentrate in the west of Japan. Meanwhile, large groups of Japanese Brazilians tend to settle in the Tokai and the North Kanto region.¹² As it is shown in the data, Aichi has the second highest number of Japanese Brazilians, 214,816, which accounts for 9.8 per cent of the total. Osaka, Kanagawa, Saitama, Chiba, and Hyogo are other regions where immigrants in Japan are distributed.¹³ When we look at the municipal distribution, it could be said that the non-Japanese concentrate in specific regions such as Ikuno in Osaka, Oizumi-machi in Gunma, and Shinjuku in Tokyo.¹⁴ For the reasons of this regional distribution, please refer to section F.

Regarding those with a resident status in 2009, 943,037 foreign nationals (43.1 per cent), are classified as permanent residents who are not required to renew their visa. The number of international students with a resident status in Japan increased between 2005 and 2009. In 2005, 129,568 international students were registered at the Immigration Bureau, and the number steadily grew to 145,909 in 2009, which constitutes 6.7 per cent of the total. 10.2 per cent are classified under the resident status as spouses of Japanese nationals.¹⁵

E. Illegal Residents in Japan

In Japan, the Immigration Bureau reports the illegal residency statistics every January, which are estimated by the records of entry and departure with the number of visa overstayers. There were 91,778 illegal residents in Japan in January 2010, which had decreased by 18.8 per cent from the previous year.¹⁶ As a result of the campaign promoted by the Japanese government to halve the number of illegal residents within 5 years from 2004 to 2008,¹⁷ the number of illegal residents has dropped substantially in

62 Immigration Bureau 2010c.

63 Kashiwazaki 2005, 34.

13 Immigration Bureau 2010c.

14 Kashiwazaki 2005, 34.

15 Immigration Bureau 2010d.

16 Immigration Bureau 2010f.

17 Ministry of Justice 2009.

recent years . In 2006, there were 193,745 illegal residents, but the number decreased by over a hundred thousand by 2010. The sex ratio is almost balanced, but there is a slightly higher number of males than females. Regarding their countries of origin from the 2010 data, the most common is Korea, which accounts for 23.6 per cent of the total number of illegal residents, followed by China and the Philippines. The numbers of illegal residents from the latter two countries each account for approximately 14 per cent of the total. Other common countries of origin include Taiwan, Thailand, Malaysia, Peru, Singapore, Sri Lanka, and Indonesia. Almost 70 per cent of those illegal residents had a short-term resident status at the time when their visa expired.¹⁸

F. Immigration Analysis

Regarding the non-Japanese people living in Japan, it is argued that there have been two major flows in the past few decades. One is known as the “oldcomers”, and the other as the “newcomers”. The oldcomers mainly consist of people from former colonies in the context of World War II including their second generation who technically hold a Korean nationality. The majority of Korean Japanese are classified as the oldcomers and have a Special Permanent Resident status that was established in 1991.¹⁹ However, as Figure 2 shows, the number of oldcomers has been decreasing due to their naturalisation, ageing and marriage with Japanese nationals.²⁰

By contrast, the so-called “newcomers” are the people who arrived after the 1980s. Unlike the oldcomers, business and study are the major purposes of the newcomers coming to Japan. Before the 1980s, women migrant workers from South East Asia began coming to Japan as entertainers to send remittance for their families, and many of them settled down with Japanese spouses in Japan.²¹

Due to the legal reform of the Immigration Control Act in 1989 and rapid economic growth in the 1980s, the numbers of immigrants continued to grow until 2009. The second and third generation of Japanese descent from South America, such as Brazil, was more easily qualified for the status of residence in Japan. Most of them are engaged in factory work. However, in the late 1980s, it is considered that a lot of male migrant workers from Asian countries overstayed with expired tourist visa, but continued working.²²

Based on its Economic Partnership Agreement with Indonesia in July 2008 and with the Philippines in December 2008, Japan has been accepting candidates of nurses and

18 Immigration Bureau 2010f.

19 Kashiwazaki 2005, 33.

20 Ji and Sakurai 2010.

21 Kashiwazaki 2005, 33.

22 Ibid.

care workers.²³ As a result, the numbers of workers from the Philippines is growing.²⁴

G. Commentary

Having discussed the trend of foreign nationals in Japan, it is still difficult for us to grasp the real number of immigrants in Japan due to the following factors. The statistics do not include the number of people who have Japanese nationality and dual nationality. Consequently, although newly naturalized citizens are estimated every year, it is hard to enumerate the number of immigrants who hold Japanese citizenship, and children of transnational couples.²⁵ These numbers are not small. It is said that approximately 15,000 acquire Japanese nationality every year, and one out of every 20 married couples are transnational.²⁶ It is possible to say that the boundary between the “Japanese” and the “non-Japanese” is also becoming less visible.

It is argued that Japan has accepted only limited immigrants compared to other countries. However, in recent years, Japan has been promoting a policy to receive foreign nationals as a means to fill the labour shortage due to a population decline. Some argue that there is a pessimistic mood for the future on the decreasing population of Japan. It is necessary to keep the population in balance by receiving immigrants, and maintain the position of Japanese economic power.²⁷ According to the immigration policy drafted by the Liberal Democratic Party lawmakers, Japan aims to accept 10 million immigrants in the next 50 years.²⁸ As part of this project, a former Prime Minister, Yasuo Fukuda, set an aim to accept 300,000 international students by 2020.²⁹ Despite setting these highly challenging goals, a lot of obstacles such as linguistic and cultural barriers and employment issues still remain. It seems that there is a significant cultural barrier to overcome.

Up to now, the idea of ‘control’ has dominated the immigration policy in Japan.³⁰ However, if Japan were to receive a large number of immigrants, the policy would have

23 Inagaki 2010.

24 Ministry of Health, Labour and Welfare 2009.

25 Kashiwazaki 2005, 34.

26 Ministry of Health, Labour and Welfare 2004.

27 Sakanaka 2005.

28 Matsutani 2008.

29 Higher Education Bureau, Ministry of Education, Culture, Sports, Science and Technology 2008.

30 Yamawaki et al. 2000.

to include the care after settlement as part of the whole reception process beginning from their entry to Japan. Due to lack of experience, Japan is still required to reorganise the immigration system.

II. ASYLUM STATISTICS

A. Introduction

Japan currently provides data on asylum seekers and refugees once a year, for which the Immigration Bureau of the Ministry of Justice is responsible. There is also a periodic report entitled “Immigration Control” summarising the five-year trends of immigration control administration, in which the details of asylum statistics are included. These sets of data and analyses are less extensive than those provided by many other industrialised countries that receive greater numbers of refugees and refugee applications, some of who update their online database monthly. Other limitations include the lack of information on the demographic composition of the refugee population in Japan, let alone the total number of applicants and persons granted refugee status including their dependents. The data is nonetheless regularly provided and analysed, and it has recently expanded its content, showing the average time taken to process a refugee status application, which is calculated quarterly.

UNHCR produces data primarily based on the statistics presented by the Japanese government, but they also count individual cases. Their most notable periodic report is “Global Trends,” which provides a comprehensive set of information on current refugee situations around the world.

Below is a compilation of 2005-2009 asylum and refugees statistics provided by the Japanese Ministry of Justice and by UNHCR, which is hoped to demonstrate the availability of the numerical representation of refugees in Japan. This report also includes a short summary of the 2010 statistics that has been released so far.

B. Refugees and Asylum Seekers

According to the Ministry of Justice, there were a total of 538 refugees accepted under the Convention relating to the Status of Refugees (Convention) in Japan by the end of 2009. Meanwhile, UNHCR reports that there were 2,332 refugees present in Japan as of the end of 2009.³¹ These refugees include Convention refugees, those recognised in accordance with UNHCR Statute, and individuals granted complementary forms of pro-

31 UNHCR 2010, 25.

tection, or those enjoying temporary protection, or otherwise described as people in a “refugee-like situation.”³²In addition, 11,319 Indo-Chinese refugees were accepted by Japan between 1978 and 2006. Although most of them are not Convention refugees, they are entitled to the same rights and protection as Convention refugees.³³

UNHCR states that there were 2,935 asylum seekers (pending cases) as of the end of 2009. Over the last five years, the number of refugee applications has overall increased, reaching its highest in history in 2008 (1,588) according to the Japanese Ministry of Justice, while the number of appeals against the denial of refugee status has also increased. 2009, in particular, saw a dramatic rise: the figure jumped from 429 to 1,156 (Table 2). However, the number of people granted refugee status has remained low and relatively stable (Figure 4). The highest number of refugee status was given in 2008 (57), but in other years only some 30 or 40 were granted refugee status.

In contrast, the number of applications that have been denied refugee status has increased with the rising number of applications. In 2005, the number of those not recognised as refugees was 249, which then increased progressively, reaching 1,703 in 2009.

The number of those given humanitarian status has also increased on the whole, topping 500 in 2009. There was a notable rise in 2008, whereby the figure more than quadrupled from the previous year. In parallel with this growth, the processing of applications has accelerated over the period, particularly after 2008 (Table 1). In 2009, 1,848 applications were processed, which is approximately double the previous year's figure and a significant change from 2005 when there were only 312. However, the number of appeals considered varied from year to year, though there has been a general increase on the whole.

The vast majority of the appeals against the decisions made to the applications are dismissed every year. In 2009, for example, 230 appeals were dismissed, and only 8 allowed. Moreover, the number of applications withdrawn has overall increased. Between 2005 and 2006, the figure doubled, and between 2008 and 2009 it doubled again reaching 70.

The Ministry of Justice also provides the number of cases where, upon submitting the application, the applicants are staying in Japan legally or illegally. Almost every year, the number of asylum seekers staying illegally in Japan topped that of those staying legally (Figure 3).

The 2009 data shows that the applicants registered were of 43 different nationalities. Every year between 2005 and 2009, the majority of applicants were from Myanmar (Ta-

32 UNHCR 2010, 23. It is stated that “the term is descriptive in nature and includes groups of people who are outside their country of origin and who face protection risks similar to those of refugees but for whom refugee status has, for practical or other reasons, not been ascertained.”

33 Kawakami et al. 2010, 19. Only 409 of them applied for refugee status, of which 157 were recognised as Convention refugees.

ble 3). According to the statistics, the majority of asylum seekers granted refugee or humanitarian status were from Myanmar. This is particularly noticeable in 2008 and 2009 when there was a sharp increase in the number of applications. Other countries of origin with higher numbers of applicants include Turkey, Sri Lanka, Pakistan and Iran.

Table 1: The number of applications and appeals received and processed

	Applications		Appeals	
	Received	Processed	Received	Processed
2005	384	312	183	195
2006	954	459	340	172
2007	816	544	362	221
2008	1,599	918	429	351
2009	1,388	1,848	1,156	308

Table created by author, figures derived from source provided by Ministry of Justice, Japan.

Table 2: Asylum completions by disposition

	Applications			Appeals			Total			
	Granted RS*	Denied RS*	Withdrawn	Allowed i.e. Granted RS*	Dismissed i.e. Denied RS*	Withdrawn	Granted RS	Denied RS*	Denied RS* But Granted HS** (a)	Withdrawn
2005	31	249	32	15	162	18	46	411	97	50
2006	22	389	48	12	127	33	34	516	53	81
2007	37	446	61	4	183	34	41	629	88	95
2008	40	791	87	17	300	34	57	1,091	360	121
2009	22	1,703	123	8	230	70	30	1,933	501	193

*RS = Refugee Status, **HS = Humanitarian Status (Applies to all tables).

(a) The number of those granted humanitarian status is only given as a total including both the applications and the appeals, with the exception of 2008 when the number of those granted humanitarian status out of the number of appeals disallowed was reported (45).

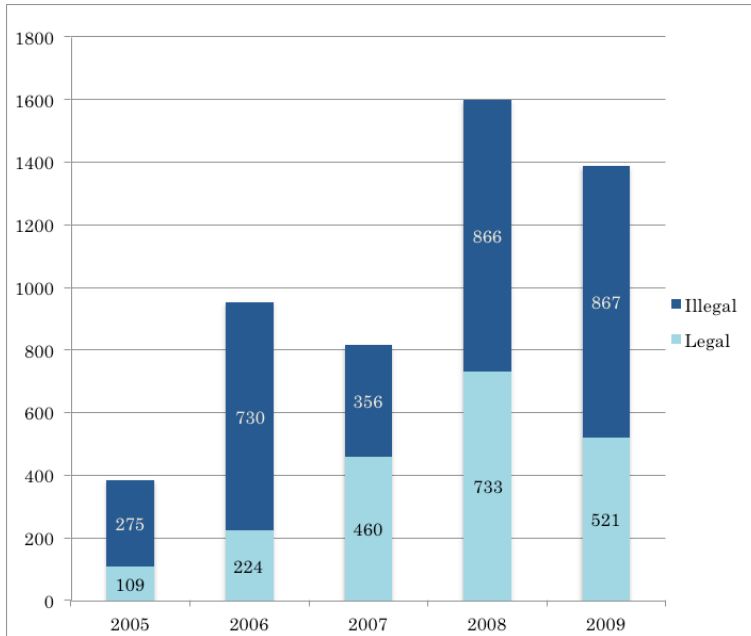
Table created by author, figures derived from source provided by Ministry of Justice, Japan.

Table 3: Myanmar asylum seekers

	Applications submitted	As %*	Appeals submitted	As %*	Granted RS	As %*	Granted HS	As %*
2005	212	(55)	102	(56)	43	(93)	52	(54)
2006	626	(66)	242	(71)	28	(82)	33	(62)
2007	500	(61)	195	(54)	35	(85)	69	(78)
2008	979	(61)	195	(45)	38	(67)	344	(96)
2009	568	(41)	632	(55)	18	(60)	478	(95)

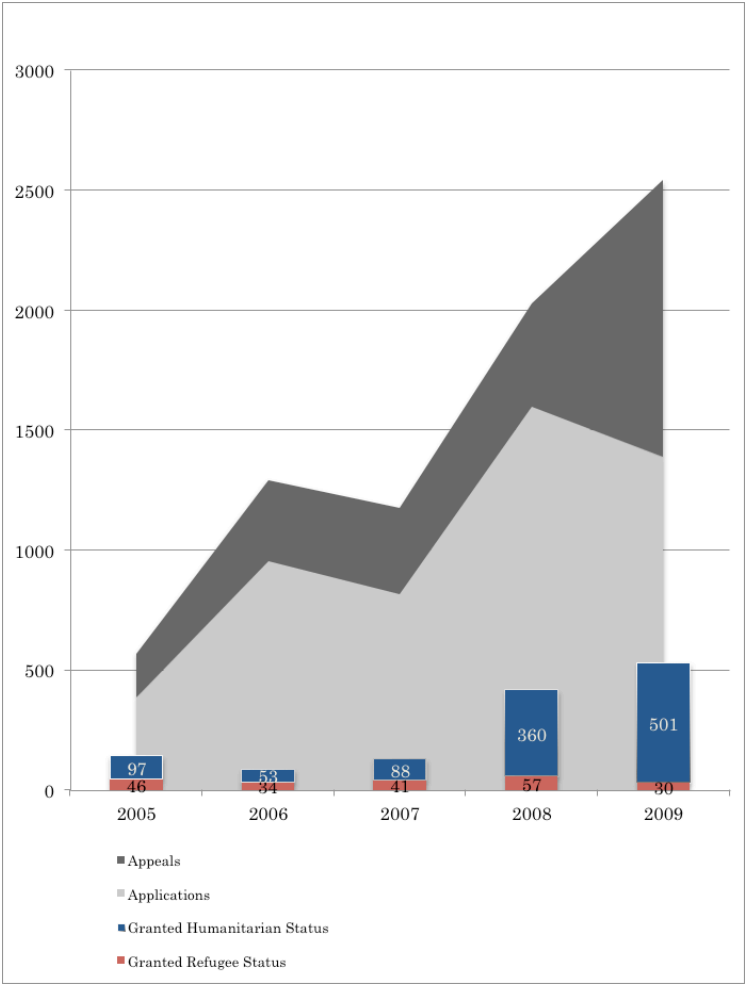
*The numbers in brackets show the percentage of the total (e.g. the total number of applications submitted by all asylum seekers, etc.).

Table created by author, figures derived from source provided by Ministry of Justice, Japan.



Graph created by author, derived from source provided by Ministry of Justice, Japan.

Figure 3: The legality of the presence of the applicant in Japan



Graph created by author, figures derived from source provided by Ministry of Justice, Japan.

Figure 4: The number of applications and appeals received, and the number of those granted protection

B. Costs

In 2009, Japan donated 110,553,715 USD to UNHCR, as the third largest donor after the USA and the European Commission. The donation has, on the whole, increased by over 6 million USD since 2005 (Table 3).

In the same year, 523,595,000 JPY was spent to provide support for the settlement of domestic refugees (the Refugee Assistance Headquarters, RHQ), a decrease of 49,373,000 JPY from the previous year.

The RHQ is funded by the Ministry of Foreign Affairs and entrusted to provide assistance for asylum seekers and refugees. Those eligible to receive financial assistance are entitled to a daily allowance of 1,500 JPY (or 750 JPY if the recipient is under the age of 12), as well as a monthly accommodation allowance of 40,000-60,000 JPY. The cost of medical care is also paid for. However, this does not apply to asylum seekers whose claim has been denied, even if they are in the process of appealing against the decision. For those eligible, the financial aid is normally provided only for four months, but the period can be extended depending on the circumstances. In response to the inquiry made by Koichi Yamauchi, a member of the House of Representatives, on October 25, 2010, the Cabinet stated that the average period of time during which financial support is provided is about 12 months as of the end of September 2010.³⁴

Table 4: Japan's donation to UNHCR

	USD	Donor Ranking
2005	94,518,948	-
2006	75,149,096	3
2007	89,703,788	2
2008	110,871,125	3
2009	110,553,715	3

Source: UNHCR

C. Commentary

Although Japan's acceptance of refugees has traditionally been limited compared with most other industrialised countries, its Ministry of Justice has been keen to highlight the total number of those granted protection; that is, the number of applicants granted refugee or humanitarian status. This is also given in percentage, which is similar to the "asylum grant rate" in the USA³⁵: the proportion of successful applications out of the total number of applications. According to the "Refugee Recognition Administration," a

³⁴ The House of Representatives, Shushitsu 176, Inquiry No.86 (October 25, 2010), responded on November 2, 2010.

³⁵ A percentage of asylum claims decided on the merits, i.e., grants and denials.

special report published in 2006, out of all the cases considered up to the end of December 2005, 36 per cent have been granted protection either through their refugee status or on humanitarian grounds.

However, such analysis should be reviewed carefully because it blurs the differences between the two levels of protection granted by presenting the proportion of people given refugee status and those given humanitarian status in one category, thereby overgrading the latter kind. Those granted refugee status are in fact entitled to more rights than those of humanitarian status: for example, the former can invite their family to the host country, whereas the latter cannot; the former have the access to social security benefits, the latter too in some cases but it is very rare, and so on.

It should also be noted that the number of refugee applications is in fact considerably lower than those of other industrialised countries, which makes it easier to reach a higher asylum grant rate. According to UNHCR statistics, the USA received the highest number of asylum applications between 2005 and 2009 (249,950 when rounded to the closest ten), which is nearly 50 times Japan's (5,130).³⁶ Compared with the average number of asylum applications for the 44 industrialised countries selected by UNHCR which is 39,220, Japan's reception of 5,130 asylum applications during the five years is remarkably low.

Some argue that the fact that the refugee recognition rate remained low and relatively constant while the number of those granted humanitarian status increased every year is a reflection of the Ministry's attempt, on the one hand, to keep the number of future refugee applications low enough that it is manageable and, on the other, to comply with the spirit of burden-sharing advocated by UNHCR. As in other countries, an increase in the asylum grant rate would attract an overflowing number of applicants in the future, with which the Immigration Bureau would not be capable of dealing.

More refugees could be present in Japan than the data shows, as some, after entering the country as short-term visitors or students, remain unregistered (overstayers) and do not claim refugee status from fear of being deported back to their home country if their application is declined.

As for the methodology used for data analysis, the Ministry of Justice tends to concentrate on diachronic analysis of consecutive years, though it has also produced data analyses that describe cumulative trends over a longer span of time, as in the 5-year report "Immigration Control" and the special report "Refugee Recognition Administration" (2006).

The Japanese Ministry of Justice and UNHCR employ different terminologies. For example, the term "asylum seeker" is hardly used by the Japanese Ministry of Justice, but instead the concept is expressed as "application for refugee status," which means that the number only counts the persons under whose name the applications are submitted (i.e. principle applicants) and not their dependents who are registered together. Otherwise, their meanings are essentially the same: UNHCR's "asylum seeker" refers to a refugee

36 UNHCR 2009a, 13.

status applicant who has not yet been adjudicated. In effect, the number of asylum seekers counted by UNHCR is the number of people whose application is pending at any stage in the asylum procedure (i.e. the sum of new applicants and multiple-time applicants). The organisation also acknowledges that “asylum seeker” is a term that only marks the official discovery of such a person, and that there are also those who intend to or should apply for refugee status because they are in need of protection but are yet to be documented. For this reason, UNHCR provides a figure that represents the “total population of concern”³⁷ in its annual report, “Global Trends,” so as to encapsulate all individuals who need protection. Due to these differences in approach to the issue, the statistics presented by the Japanese Ministry of Justice do not reveal some of the fundamental numbers provided by UNHCR, such as the total number of refugees residing in Japan.

D. 2010 So Far

Japan has donated 143,494,234 USD to UNHCR as of November 30, 2010 - an increase of 32,940,519 USD from last year. Topping European Commission's donation, it is ranked the second biggest donor after the USA. It also formulated a budget of 651,691,727 JPY for supporting the settlement of domestic refugees in fiscal year 2010.

The Ministry of Justice has made the decision to publicly report the average number of months taken to process refugee status applications from July 2010. This is a quarterly compilation of figures, and the Ministry released its first set of data on July 4 this year. It revealed that the average time taken to process asylum applications for the period January-June 2010 was approximately 13 months. This is a positive change from 2006, when it was approximately 18 months (545 days).³⁸ The Ministry has set a new standard for processing refugee applications and aims to reduce the average time taken to consider the application to six months by March 2011.

Japan has received 27 refugees under the Third Country Resettlement Programme promoted by UNHCR. This is in fact a pilot programme implemented for the first time, and Japan is expected to receive approximately 30 refugees per year from Mae La refu-

37 Persons of concern include Convention refugees, people in refugee-like situations, asylum seekers (pending cases), returnees, internally displaced persons, and stateless persons.

38 The Naikaku Sanshitsu No.168, Toubensho No.49. Response to the inquiry made by Satsuki Eda at the House of Councillors on November 16, 2007.
<http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/168/touh/t168049.htm> (Accessed December 5, 2010).

gee camp in Thailand between 2010 and 2012.³⁹

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39 See the report on the "Third Country Resettlement Programme in Japan" in this issue of CDRQ (Vol.2) for more details.

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NOTES

DEVELOPMENTS OF HMS/CDR

Satoshi YAMAMOTO*

I. STAFF AS OF SEPTEMBER 2010 TO FEBRUARY 2011

General policy of CDR is decided by the CDR Executive Committee in its monthly meetings. The daily work of CDR is managed by the following 8 staffs. Student Interns are welcome anytime.

- Yasunobu SATO (Director)
- Satoshi YAMAMOTO (Vice Director)
- Yumi NAGANUMA (Secretary)
- Joseph TABAGO (Research Assistant)
- Junko MIURA (Research Assistant)
- Shikiko MASUTOMI (Research Assistant)
- Kumiko NIITSU (Research Assistant)
- Magdalena IONESCU (CDRQ Editorial Assistant)

II. EVENTS

A. Past HSP-CDR Seminars and Other Events

The CDR hosted 5 seminars (HSP-CDR Seminar no.13-17), a summer intensive course on refugee law, and 2 other events since the last issuance of CDRQ. It also hosted several symposia co-sponsored with the Graduate Program on Human Security (HSP) and other organisations. Details of these seminars and symposia are available at: <http://cdr.c.u-tokyo.ac.jp/>

* Satoshi YAMAMOTO: CDR staff.

B. HMS/CDR Summer Intensive Course 2010

HMS/CDR organised a summer intensive course on the rights of refugees under international law this year (22 - 25 September). The coursework was designed to allow participants to grasp the general situation of refugee rights in the world, with an special focus on issues relating to Japan. Asylum seekers are smuggled in many occasions and this means that some asylum seekers face the risk of detention by the authority in the asylum countries. These cases are very common in Japan too and the situation sometimes seem to violate some basic human rights of the asylum seekers. To comment on the situation, the HMS/CDR has invited professor James C. Hathaway as a main guest lecturer for the intensive course. For more details, please visit our official website <http://cdr.c.u-tokyo.ac.jp>.

The last part of the intensive course has been run in conjunction with the Human Security Consortium 2010. The consortium was for students and researchers who are interested in the issues of human security. This annual research meeting had been held since 2007. This year's research meeting was hosted by HSP and the grand theme was to be "Human Diversity and Business". Professor Hathaway's lecture was shared by the consortium as the keynote speech and panel discussion session.

C. Website Contents Development (Sept. 2010 to Feb. 2011)

Since the renewal of its official website last September, CDR has been developing series of "Shortbooks" (current total: 22 titles) in which readers can find encyclopedia-like descriptions of issues relating to refugees and migrants with specific points of interest and references. The website also includes news relating to incidents in this field, reported by mass media.

CALL FOR CONTRIBUTIONS

CDRQ is an open journal published on a quarterly basis. The aim of the journal is to disseminate information collected from research activities of CDR and related partners. It also welcomes contributions not only from academics but also from practitioners who are facing real social problems. This journal primarily focuses on issues of movement of people basically. However the contents also include variety of related fields such as governance and conflict resolution and prevention, as these issues induce and escalate forced displacement and more longer-term movement of people. The purpose of the journal is to provide a crosscut perspectives on refugee and migrant issues with comprehensive awareness to the issues of movement of people.

For more details, please access to the official website of the CDR and download the "CDRQ Handbook": http://cdr.c.u-tokyo.ac.jp/Quarterly/Q_handbook.pdf

